HON. CLINTON W. HOWARD.
President.

PROCEEDINGS

Washington State Bar Association

HELD IN THE CITY OF

BELLINGHAM, WASHINGTON

July 28, 29 and 30, 1910

Twenty-Second Annual Convention

OFFICIAL REPORTER
O. C. GASTON
EVERETT, WASHINGTON

OLYMPIA, WASHINGTON
1911
THE RECORDER PRESS

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I, C. W. HOWARD, do hereby certify that I am the duly elected, qualified and acting President of the Washington State Bar Association; that the three foregoing pages contain the names of the respective committees, together with the names of the various members of such Association by me appointed on such committees, the first named on each committee to be the chairman thereof.

Dated at Bellingham, Washington, this the 17th day of December, 1910.

C. W. HOWARD, *President.*

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Bonner, W. W.....Aberdeen
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Brady, Edward.....Seattle
Brandt, Emil J.....Seattle
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Brents, Thos. H.....Walla Walla
Bridges, J. B.....Aberdeen
Brockway, E. B.....Tacoma
Bronson, Ira.....Seattle
Brooks, J. W.....Walla Walla
Brown, Ed. J.....Seattle
Brown, L. Frank.....Seattle
Brown, O. P.....Bellingham
Brown, W. P.....Bellingham

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Campbell, W. E. ..... Hoquiam
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Coleman, J. A. ..... Everett
Coleman, Wilbra ..... Sedro-Woolley
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Connor, E. O. ..... Spokane
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Cosgrove, H. G. ..... Seattle
Craven, A. J. ..... Bellingham
Cross, A. Emerson ..... Aberdeen
Crow, Denton M. ..... Spokane
Crow, Herman D. ..... Olympia
Cushman, E. E. ..... Juneau, Alaska
Daly, W. J. ..... Seattle
Darch, Wm. F. ..... Goldendale
Davidson, J. B. ..... Ellensburg
Davis, Allen S. ..... North Yakima
Davis, Robert M. ..... Tacoma
Dawson, W. S. ..... Spokane
Day, E. M. ..... Bellingham
Delle, Lee C. ..... North Yakima
Deming, A. W. ..... Sine
Denning, J. Henry ..... Seattle
Dentler, Grant A. ..... Tacoma
DeSteiguer, Geo. E. ..... Seattle
Devers, R. A. ..... Seattle
Dewart, F. M. ..... Spokane

Dilley, Wm. A.....Seattle
Dobbs, Chas. J.....Seattle
Donworth, Geo.....Seattle
Dorr, C. W.....Seattle
Douglas, J. F.....Seattle
Douglas, James H.....Seattle
Dovell, W. T.....Seattle
Dow, Lorenzo.....Tacoma
Dowd, Jas. B.....Seattle
Drain, Dale D.....Spokane
Drain, James A.....Washington, D. C.
Dudley, F. M.....Seattle
Dunbar, R. O.....Olympia
Duryee, Schuyler.....Everett
Earle, Dan.....Seattle
Easterday, J. H.....Tacoma
Edge, Lester P.....Spokane
Edsen, Edward P.....Seattle
Ellis, O. G.....Tacoma
Emerson, W. M.....Chelan
Emmons, R. W.....Seattle
Englehart, Ira P.....North Yakima
Eshelman, Carl D.....Tacoma
Eskridge, Richard Stevens.....Seattle
Fairchild, H. A.....Olympia
Falknor, A. J.....Seattle
Farrell, C. H.....Seattle
Faussett, R. J.....Everett
Fay, John P.....Seattle
Featherkile, D. W.....Bellingham
Field, H. H.....Seattle
Fisk, T. P.....Shelton
Fitch, J. F.....Tacoma
Fitzpatrick, John L.....Seattle

Flett, W. H. ..... Seattle
Flood, Ernest M. ..... Spokane
Flick, Edwin H. ..... Seattle
Fogg, Edward ..... Tacoma
Follmer, Elmer S. ..... Seattle
Folsom, H. D., Jr. ..... Seattle
Force, H. C. ..... Seattle
Fouts, Chas. M. ..... Seattle
Foutz, Will H. ..... Dayton
Frater, A. W. ..... Seattle
Frost, J. E. ..... Olympia
Fullerton, Mark A. ..... Olympia
Fulton, Walter ..... Seattle
Garland, Hugh A. ..... Seattle
Garrecht, Francis A. ..... Walla Walla
Gaston, O. C. ..... Everett
Gay, W. R. ..... Seattle
Gephart, James M. ..... Seattle
Geraghty, J. M. ..... Spokane
Gilbert, W. S. ..... Spokane
Gill, Hi. ..... Seattle
Gilliam, Mitchell ..... Seattle
Gleason, Chas. S. ..... Seattle
Gnagey, U. D. ..... Pt. Townsend
Godfrey, James J. ..... Seattle
Godman, M. M. ..... Seattle
Gordon, Carroll ..... Olympia
Gorham, W. H. ..... Seattle
Gose, C. C. ..... Walla Walla
Gose, M. F. ..... Olympia
Graham, E. A. ..... Aberdeen
Granger, H. T. ..... Seattle
Graves, Carroll B. ..... Seattle
Graves, Will G. ..... Spokane
Green, J. Lindley ..... Seattle

Greene, Roger S. ..... Seattle
Greene, R. W. ..... Bellingham
Griffiths, Austin E. ..... Seattle
Griffiths, Frank S. ..... Seattle
Griggs, H. S. ..... Tacoma
Grimshaw, W. A. ..... Wenatchee
Grinstead, Loren ..... Seattle
Griswold, W. J. ..... Bellingham
Grosscup, B. S. ..... Tacoma
Guie, E. H. ..... Seattle
Guie, J. A. ..... Seattle
Hadley, H. E. ..... Seattle
Hadley, A. M. ..... Belingham
Hadley, L. H. ..... Bellingham
Haight, Jas. A. ..... Seattle
Hall, Calvin S. ..... Seattle
Halverstadt, Dallas V. ..... Seattle
Hamblin, L. R. ..... Spokane
Hanford, C. H. ..... Seattle
Hanford, E. C. ..... Seattle
Happy, Cyrus ..... Spokane
Hardin, E. E. ..... Bellingham
Hardman, Max ..... Seattle
Harmon, U. E. ..... Tacoma
Harriman, Henry R. ..... Seattle
Harris, Chas. P. ..... Seattle
Hart, Jno. B. ..... Seattle
Hartman, John P. ..... Seattle
Harvey, Walter M. ..... Tacoma
Hastings, H. H. A. ..... Seattle
Hathaway, Howard ..... Everett
Hayden, E. M. ..... Tacoma
Hayden, W. H. ..... Tacoma
Healey, T. D. J. ..... Bellingham

Heath, Sidney Moore.....Hoquiam
Heaton, O. G.....Seattle
Herr, Willis B.....Seattle
Hess, John B.....Spokane
Heyburn, W. B.....Wallace, Idaho
Hibschman, H. J.....Spokane
Higgins, John C.....Seattle
Higgins, Thos. B.....Spokane
Hill, Wm. Lair.....Seattle
Hills, Chas. S.....Seattle
Hindman, W. W.....Spokane
Hinkle, J. D.....Spokane
Hodgdon, C. W.....Hoquiam
Hodge, G. J.....Seattle
Holbrook, Paul .....Seattle
Holcomb, O. R.....Ritzville
Holt, R. S.....Tacoma
Horan, J. E.....Everett
Hovey, C. R.....Ellensburg
Howard, C. W.....Bellingham
Howe, James B.....Seattle
Hoyt, John P.....Seattle
Hubbard, H. Frank.....Wenatchee
Hudson, R. G.....Tacoma
Hughes, E. C.....Seattle
Hughes, H. DeHart.....Seattle
Hughes, P. D.....Seattle
Hulbert, Robt. A.....Seattle
Hull, H. L.....North Yakima
Humphrey, W. E.....Seattle
Humphries, John E.....Seattle
Huneke, Wm. A.....Spokane
Hurd, M. P.....Mt. Vernon
Hurlbut, Chas. H.....Bellingham

Hutchinson, R. G. ..... Seattle
Hutson, Chas. T. ..... Seattle
Imus, A. H. ..... Kalama
Irwin, Mason ..... Montesano
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Joiner, Geo. A. ..... Mt. Vernon
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Jones, W. L. ..... North Yakima
Jones, L. W. ..... Arlington
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Kane, James H. ..... Seattle
Kauffman, Ralph ..... Ellensburg
Keith, W. C. ..... Seattle
Kelleher, John ..... Seattle
Kellogg, J. A. ..... Bellingham
Kellogg, J. A. ..... Seattle
Kemp, Fred ..... Wenatchee
Kennan, H. L. ..... Spokane
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Lund, R. H. ..... Tacoma
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Miller, Fred ..... Spokane
Million, E. C. ..... Seattle
Mires, Austin ..... Ellensburg
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Moore, W. H. ..... Seattle
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Moser, B. B. ..... Seattle
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Murphine, Thos. F. ..... Seattle

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Ogdon, R. D.....Seattle
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Pelletier, John H.....Spokane
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Peterson, Fred H. ..... Seattle
Peterson, N. S. ..... Seattle
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Pinckney, John J. ..... Blaine
Place, Victor M. ..... Seattle
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Post, Frank T. ..... Spokane
Powell, J. H. ..... Seattle
Prather, L. H. ..... Spokane
Pratt, Peter L. ..... Seattle
Pratt, W. H. ..... Tacoma
Preble, E. B. ..... North Yakima
Presby, W. B. ..... Goldendale
Preston, Harold ..... Seattle
Pritchard, S. J. ..... Everett
Pugh, Fred C. ..... Spokane
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Quinby, Frank ..... Anacortes
Radley, F. W. ..... Bellingham
Ramsey, H. J. ..... Seattle
Rawson, Z. B. ..... Seattle
Reed, J. F. ..... Seattle
Reeves, Frank ..... Wenatchee
Reeves, Fred ..... Wenatchee
Reid, Geo. T. ..... Tacoma
Reinhart, C. S. ..... Olympia
Remington, Arthur ..... Olympia
Reynolds, A. H. ..... Walla Walla

Reynolds, C. A.....Seattle
Rhodes, Harry A.....Spokane
Rice, A. E.....Chehalis
Richardson, W. E.....Spokane
Riddle, C. A.....Seattle
Rinehart, W. V.....Seattle
Ritchie, Wm. B.....Port Angeles
Robb, Bamford H.....Seattle
Roberts, J. W.....Seattle
Roche, John H.....Spokane
Rochester, G. A. C.....Seattle
Rockwell, T. D.....Olympia
Rokes, J. A.....Seattle
Romaine, J. W.....Bellingham
Ronald, J. T.....Seattle
Ross, E. W.....Olympia
Rosslow, Joseph.....Spokane
Rowland, H. G.....Tacoma
Rozema, Martin.....Seattle
Rudkin, Frank H.....Spokane
Rummens, G. H.....Seattle
Rupp, Otto B.....Seattle
Ryan, John E.....Seattle
Sather, Chas. A.....Bellingham
Saunders, R. C.....Seattle
Saville, O. J.....Spokane
Scott, W. D.....Spokane
Seabury, J. H.....Sedro-Wooley
Shackleford, John A.....Tacoma
Shaffer, C. Will.....Olympia
Shaffrath, Paul.....Seattle
Shank, Corwin S.....Seattle
Sharp, R. G.....Seattle
Sharpstein, John L.....Walla Walla

Sheeks, Ben.....Montesano
Shelley, T. H.....Seattle
Shepard, Chas. E.....Seattle
Shepard, Thos. R.....Seattle
Shine, P. C.....Spokane
Shippen, Joseph.....Seattle
Shorett, J. W.....Seattle
Shorts, Bruce C.....Seattle
Simpson, James M.....Spokane
Smith, Carl J.....Seattle
Smith, Dell Cary.....Spokane
Smith, Everett, ...Walla Walla
Smith, Sol.....South Bend
Smith, Winfield R.....Seattle
Snell, Bertha M.....Tacoma
Snell, Marshall K.....Tacoma
Snell, W. H.....Tacoma
Snook, Herbert E.....Seattle
Snyder, Edgar C.....Seattle
Southard, Frank S.....Seattle
Southard, W. E.....Wilson Creek
Sparks, W. W.....Vancouver
Spirk, Chas. A.....Seattle
Spirk, Geo. L.....Seattle
Spooner, Chas. P.....Seattle
Squire, Watson C.....Seattle
Stallcup, John C.....Tacoma
Stedman, Livingston B.....Seattle
Steele, E. N.....Olympia
Steele, Sam'l H.....Seattle
Steiner, G. E.....Seattle
Steiner, R. S.....Waterville
Stephens, H. M.....Spokane
Stern, Sam'l R.....Spokane

Stevens, Edward B.....Seattle
Stevenson, Loren C.....Tacoma
Stewart, James.....Pt. Angeles
Stewart, Chas. W.....Tacoma
Stiles, Theo. L.....Tacoma
Stone, J. E.....Kalama
Stratton, W. B.....Seattle
Sturdevant, R. F.....Olympia
Sturdevant, R. M.....Dayton
Sullivan, Potter C.....Seattle
Sumner, Sam R.....Wenatchee
Swindle, Anthony J.....Tacoma
Tait, Hugh A.....Seattle
Tallman, Boyd J.....Seattle
Tanner, W. V.....Olympia
Teats, Govnor.....Tacoma
Tennant, A. J.....Seattle
Terhune, R. S.....Seattle
Thompson, H. R.....Seattle
Thompson, R. E.....Seattle
Thompson, Will H.....Seattle
Thompson, Howard C.....Bellingham
Thorgrimson, O. B.....Seattle
Todd, E. E.....Seattle
Tolman, W. W.....Spokane
Totten, Wm. D.....Seattle
Trefethen, D. B.....Seattle
Tremper, H. S.....Seattle
Troy, P. M.....Olympia
Trimble, W. P.....Seattle
Trumbull, F. F.....Port Angeles
Trumbull, John.....Seattle
Tucker, O. A.....Cordova, Alaska
Tucker, Wilmon.....Seattle

Turner, George.....Spokane
Turner, L. T.....Seattle
Udell, Clayton E.....North Yakima
Van Dyke, John B.....Seattle
Vance, T. M.....Olympia
Vincenhaler, E. A.....Seattle
Voorhees, Reese H.....Spokane
Wade, Austin M.....Aberdeen
Wakefield, W. J. C.....Spokane
Walker, Geo. H.....Seattle
Wall, J. P.....Seattle
Waller, J. L.....Tacoma
Warburton, Stanton.....Tacoma
Ward, E. C.....Goldendale
Warren, W. T.....Davenport
Waters, Thos. R.....Bellingham
Watkins, Walter Hugh.....Seattle
Waugh, J. C.....Mt. Vernon
Webb, O. T.....Everett
Webster, J. Stanley.....Spokane
Welsh, J. T.....South Bend
Welsh, W. J.....Roslyn
Wheeler, L. H.....Seattle
Whitcomb, Walter.....Blaine
White, Ralph C.....Aberdeen
White, H. M.....Bellingham
Whitlock, J. C.....Seattle
Wickersham, James.....Fairbanks, Alaska
Wilhelm, Honor L.....Seattle
Williams, J. A.....Spokane
Williams, C. M.....Everett
Williams, W. M.....Olympia
Williamson, Geo. G.....Tacoma
Wilshire, W. W.....Seattle

Wilson, Harvey E. ..... Seattle
Wilson, Jno. M. ..... Olympia
Wilson, Lester ..... Seattle
Wilson, Worrall ..... Seattle
Winders, C. H. ..... Seattle
Winfree, W. H. ..... Spokane
Woods, Ralph ..... Tacoma
Wooten, Dudley G. ..... Seattle
Worden, W. A. ..... Tacoma
Wray, Wm. ..... Seattle
Wright, Elias A. ..... Seattle
Wright, Geo. E. ..... Seattle
Wright, Edward H. ..... South Bend
Yakey, John B. ..... Port Orchard
Zent, W. W. ..... Ritzville

PROCEEDINGS

The proceedings of the Washington State Bar Association, Twenty-second Annual Session, held at Bellingham, July 28-30, 1910.

Thursday, July 28th, 1910, 10:30 a. m.

MR. PRESIDENT—Gentlemen of the Association, please come to order. The first matter that is on our program is the Address of Welcome by Mr. S. M. Bruce, President of the Whatcom Bar Association, to whom we will now listen.

MR. BRUCE—Mr. President and gentlemen of the State Bar Association: Speaking in behalf of the citizenship of this community as well as and particularly in behalf of the Whatcom Bar Association, we want to tell you that we are glad to have you among us. A body of representative men coming into a community is always an uplift, and you come here at a fortunate period. We have just had a convention of the physicians of the state, and the health of the community is good. The Prosecutors of the state are in session, away from home, and cannot see what takes place. The Judges of the state have just adjourned, after devising rules which will not go into effect until this meeting adjourns. It is a pleasure, on the part of ourselves, to welcome old friends and renew acquaintance, which will sweeten our lives hereafter, and to make new friends, which will enliven the present moment and be dear to us along the pathway of life. That is the way we look at your coming and that is the expression we wish to make to you.

We want you, while you sojourn with us, to feel at home and go and come with that same freedom of thought to yourselves and the same welcome upon our part that you would feel were you at home and that you would wish to extend to us. We know that you come here to do a great work which is purely

a labor of love, but is for the upbuilding of humanity and we wish to be co-workers with you.

Aside from all that, we appreciate that "much study is a weariness to the flesh" and "no play makes Jack a dull boy," and our committee has arranged that your labors shall be interspersed with some diversion. We will have a smoker in this room this evening, which you are all expected to attend. Saturday, the day always given over to recreation, we want to take you out upon the high seas and show you the beauties of Puget Sound as viewed from this geographic point. After that is done, we want to send you home with that feeling in your hearts which will make you say to the absentee, when you meet him, that he should have been here, and make you say to yourselves always, "I am glad I was there," and, finally, we want you to leave a good work from this convention, which we know you will do as well as you have in the past, and always remember —if you will permit me to paraphrase an old song—that, locally, "Our hearts are full of honey and it's all for you."

(Applause.)

MR. PRESIDENT—Judge Alberson, of the King County bench, will respond to this address of Mr. Bruce.

MR. ALBERTSON—Judge Albertson, of the King County and Bar of the State of Washington: The absence of the distinguished gentleman, Chief Justice Rudkin, who was expected to respond to this address of welcome, is to be regretted by all of us, but, when his absence was announced to me a few minutes ago and I was requested to act in his stead, I felt that I might well call myself the chief mourner on this occasion, and I expect to remain so until the close of these remarks, when the rest of you will probably occupy that solemn situation. The only solace for our sorrow on account of the absence of Chief Justice Rudkin is the fact that he is now in Olympia. It pleases all of us to remember that he has been there for some years in the past and it delights us all to know that he will

remain there for some years in the future. We are glad to find that he is so fond of Olympia, because he is destined to stay there, and on account of that we will forgive his absence on this occasion.

(Applause.)

When I was a boy scribbling pot-hooks on my little slate at school and had progressed so far in the art of chirography as to copy certain mottoes embodying the excellency of human wisdom, I recall one little sentiment that I could copy first rate: "Silence is golden." I learned that lesson when I was a boy and I have endeavored to employ it in my daily life ever since, and particularly since, by some mischance, I was elevated to the high office of Superior Judge. If I have attained any celebrity in the legal world it is because I have adhered to that old adage in my opinions and rulings. The conclusion is reached that, because nobody else can see a reason for the ruling, it must be based in sound wisdom.

We have been in association here, the Judges of the Superior Court of this State, for two days past, and we have enacted certain rules which shall control and regulate the practice of the Superior Courts of this state, and when the Bar of this state comes to look over those rules it may agree with some learned gentlemen who are technically critical, that the rules of the Superior Courts of the State of Washington are somewhat in the nature of new legislation, but my respect for the Supreme Court of this state and my admiration of that body, perhaps is responsible for my part in the adoption of these rules, because, as I understand, the courts of this state are permitted to legislate when it becomes proper to do so.

I perhaps should remain silent, in adherence to the motto which I adopted so early, but even the staple product of our Puget Sound waters, the clam, would certainly be moved to some expression when surrounded, as I have been for two days and as all of you are at the present time, with the charms and

attractions which always greet every visitor to the fair city of Bellingham. It was my privilege, on day before yesterday, to be escorted by some of your citizens in a ride around the suburbs of this magnificent young city, and I was pleased to see the progress that has been made in this vast section of the state since I was last here, some eight or ten years ago. As a citizen of the State of Washington my heart has glowed with admiration as I have looked around and beheld some of the great natural resources with which this section of country has been so highly favored, and my heart glowed with pride as I beheld the beneficent influence of the laws of our land which have permitted so many of your natural resources to be developed. I am glad to see, my friends of the City of Bellingham, that all of your natural resources have not been entirely "conserved."

It is a pleasure to me, as a practitioner in the Courts of the State of Washington for some twenty years before I became a member of the bench—it is a pleasure to me as Judge of the Superior Court, who, for some years, has presided over one of the Superior Courts of this state, to be present here in this assembly of the great Bar and Bench of the great State of Washington. As a boy, my heart stirred with pride when I contemplated the glorious profession which my honored father had followed and which was the hope and inspiration of my younger days. The practice of law, the profession of law, it does seem to me is the most glorious occupation that can engage the intellect of man, and I have felt proud, since I came to the State of Washington, to meet, in every part of the state, men worthy of that high calling, and it rejoices me to learn and know that here, in the City of Bellingham, is found the highest expression of the high standard of that noble calling. I know that here, in Bellingham, their is a code of ethics in the practice of the legal profession which does not need to be printed or published. There is a feeling of honor in the profession

here, among the practitioners of the City of Bellingham, that has never dared to ask a man to put his name to an agreement to a matter occurring in court, and it is in such a community as this the Bar of the State of Washington delights to assemble. I thank you, gentlemen. (Applause.)

MR. PRESIDENT—Gentlemen, we will now listen to the reading of the report of the Secretary.

REPORT OF SECRETARY.

Olympia, Washington, July 1, 1910.

To the Washington State Bar Association:

As Secretary I hereby submit my report, covering the period from July 1, 1909, to July 1, 1910.

The membership as per last report was	527	
Admited to membership since	48	
Total		575
Died	4	
Withdrawn	?	
Suspended for non-payment of dues January 1, 1910	141	
		147
Membership to date		428

FINANCIAL STATEMENT.

Collections from dues from July 1, 1909, to July 1, 1910 (except part of July, 1909, collections reported last year) $903.00

EXPENSES.

Expenses arranging program last year:

Telegrams, July, 1909	$ 8.65
Telephoning	12.40
Postage, sending out programs, etc	12.00
Printing final programs, Geo. Blankenship	10.00
Mimeograph paper	4.00

Expenses of meeting, 1909:

Cassidy, hotel bill	$ 4.00	
Cotton, hotel bill	4.00	
Telephoning	2.20	
Stenographer, O. C. Gaston	15.00	

Miscellaneous matters attending meeting:

Expressage, janitor, special stenographer, telephone	20.65	
		45.85

July 31, printing, Blankenship & Dyke, Olympia:

Letter heads	$ 4.50	
500 notices of delinquent dues	2.00	
500 postal cards—two sides	3.00	
500 postal cards—double—2c	10.00	
		19.50
Sept. 1, printing, Recorder publishing Co., Olympia, envelopes		4.50
Sept. 10, J. C. Higgins, expenses of stenographer, etc., DeWolfe investigation		19.66
Sept. 10, transcript of proceedings, O. C. Gaston		52.72
March 1, 1000 membership blanks, Geo. E. Blankenship		5.00
March 10, telephoning to Gose and Shackleford		2.10
April 20, postage		50.00
April 21, expressage on proceedings		4.50

April 22, printing, Recorder Publishing Co., Olympia:

Proceedings 1909, 226 pages, 87	$196.62	
One half-tone cut	1.85	
Alterations	7.50	
Cloth binding	116.50	
1000 copies constitution	14 50	
Four addresses (100 each) $4.75	19.00	
		355.97

Jan. 17, printing, Recorder Publishing Co., Olympia:

1000 letter heads	$ 4.25	
1000 envelopes	4.00	
		8.25
April 22, printing, E. L. Boardman, state printer, 1000 envelope clasps		10.00
June 3, miscellaneous expenses		14.00
Postage		20.00
Clerk's assistance for year		60.00
1000 letter programs, Geo. E. Blankenship		12.50
Total expenses from July 1, 1909, to July 1, 1910		$731.60
Balance		$171.40

While the expenses for last year seem somewhat excessive, the desire of this office is to keep them at a minimum consistent with the dignity of the Association, in fact, this effort to save has been sometimes at the expense of dignity.

There are two matters in the expense account that I desire to

comment on: the two items of miscellaneous expense and the item of clerk hire. Up to last year the practice was to pay the Secretary $60.00 per year and his actual expenses, including his expenses while attending the annual meetings. This, of course, never was used to the extent of meeting his aggregate expenses, as, for instance, last year in making up the program I made trips to British Columbia, Portland, Tacoma, Seattle and other places, strictly on Association business, and like trips have been made to Seattle and Tacoma since last year's session, yet no charge has been made for any of this. The miscellaneous expenses for last meeting, $20.65, cover small items not important enough to itemize, though in this one is $8.25 for special stenographer in doing work for one of our speakers and copying and manifolding certain portions of our Constitution and By-Laws that were much in discussion. Some of these items are such that you do not care to publish, as, a small reward (not "tip," for that is unlawful) to the janitor of the place where we met, for his faithful services. While this office has paid out a little over $60.00 for clerical assistance, that amount only has been charged, because that was the amount allowed heretofore in the form of salary. The new By-Laws did not say the Secretary could have his expenses or salary, but left it with the Executive Committee. This committee has not met during the year, and as I desire to make my report close with the year ending June 30, I thus present these items without submitting them first to the Executive Committee. This explanation is made, also, because there has been no auditing of the books.

There probably should be some sort of a voucher arrangement for paying accounts against the Association.

The office of Secretary is an arduous, exacting duty. When you realize that an average between ten to fifteen (nearer the latter) letters or articles are mailed from the office for every day in the year, you will know that if the Secretary goes fishing on Sunday or spends an evening at home with his family he must work overtime to keep up. The Secretary should not be required to collect the dues, for, if he is, then there is no need of a treasurer. While I am loath to plaster our Constitution with amendments so soon after its adoption, yet this is a matter I urged before the Committee on Constitution when it was framing that document and they adopted my view, but the Association restored that duty to the Secretary in amending the Constitution at the time of its adoption. The duties should be separated or the offices combined and a sufficient amount authorized for clerk hire to do the work properly.

The Secretary receives the publications of other State Bar Associations. These are very valuable to the Bar and no place are they more accessable than in the State Law Library. Those turned over

to me when I became Secretary, and all received since, have been deposited in said Library. The Association loses nothing by this and the State Law Library is benefited immeasureably. In this connection I have prepared a formal By-Law and urge its adoption. Often times the best and sometimes the only discussion to be found on a subject is in the proceedings of the various State Bar Associations. It would cost the Library a hundred or so dollars a year to supply itself with these various reports. While this Association has been generous in the distribution of its reports, sending a copy to each State Law Library, and requesting each librarian thereof to urge the Bar Association of his respective State to put our library on such Association's mailing list, the results have not been satisfactory, but the officers of this Association, usually the Secretary, receives the publications of practically all these various State Bar Associations. By depositing them in the State Library the library is thus enriched and the books are where the officers of the State and the Bar can use them.

Respectfully submitted,

C. WILL SHAFFER, *Secretary.*

Upon motion, the report was adopted.

MR. PRESIDENT—We will now have the report of the Treasurer of the Association.

MR. SECRETARY—Mr. President, the Treasurer has asked me to read his report.

REPORT OF THE TREASURER.

Amount on hand per last report	$ 572.51
Amount paid by Treasurer N. S. Porter, stenographer's fees in special investigation, warrant No. 33	429.00
Amount received from Treasurer Porter	143.51
Amount received from Secretary	903.00
Total	$1,046.51
Paid warrant No. 34, expenses of Secretary's office, July 1, 1909, to July 1, 1910	731.60
Balance on hand July 1, 1910	$314.91
	$314.91

Upon motion, the report was adopted.

MR. PRESIDENT—We next have the report of the Committee on Membership, Mr. C. W. Howard, Chairman.

MR. HOWARD—Mr. President, I submit the report of the Committee, and would ask the secretary to read it.

REPORT OF COMMITTEE ON MEMBERSHIP.

To the President of the Washington State Bar Association:

Your committee on membership begs leave to report that it has, during the interim of the meetings of this Association, approved for membership in this Association the names herewith submitted, pursuant to Sec. 4 of Art. 3 of the Constitution.

Respectfuly submitted,

C. W. HOWARD, Chairman,
HOWARD HATHAWAY,
WALTER CHRISTIAN,
JOHN T. WELSH,
IRA BRONSON,
Committee on Membership.

Anthony N. Arntson, Tacoma.	S. J. Pritchard, Everet.
Robert M. Davis, Tacoma.	S. A. Boswick, Everett.
Edward Fogg, Tacoma.	O. T. Webb, Everett.
Carl D. Eshelman, Tacoma.	Geo. W. Louttit, Everett.
J. W. Quick, Tacoma.	L. N. Jones, Arlington.
Frank C. Neal, Tacoma.	F. F. Trumbull, Port Angeles.
O. G. Ellis, Tacoma.	Wm. B. Ritchie, Port Angeles.
F. A. Latcham, Tacoma.	F. V. Brown, Seattle.
H. F. Norris, Tacoma.	Hi Gill, Seattle.
C. P. Burkey, Tacoma.	M. P. Hurd, Mt. Vernon.
H. G. Rowland, Tacoma.	L. H. Hadley, Bellingham.
E. B. Brockway, Tacoma.	A. M. Hadley, Bellingham.
Chas. W. Stewart, Tacoma.	W. H. Abbott, Bellingham.
Chas. S. Lyons, Tacoma.	Henry W. Parrott, Bellingham.
Augustus J. Koehler, Tacoma.	T. G. Newman, Bellingham.
W. H. Hayden, Tacoma.	Charles H. Hurlbut, Bellingham.
Lorenzo Dow, Tacoma.	H. C. Beach, Bellingham.
A. B. Bell, Tacoma.	Chas. A. Sather, Bellingham.
Wm. D. Askren, Tacoma.	E. M. Day, Bellingham.
Grant A. Dentler, Tacoma.	Howard C. Thompson, Bellingham.

W. C. Morrow, Tacoma.
J. F. Fitch, Tacoma.
Marion A. Butler, Seattle.
E. C. Hanford, Seattle.
Charles E. Congleton, Seattle.
Geo. W. Korte, Seattle.
Dale D. Drain, Spokane.
A. J. Laughan, Spokane.
H. M. Stephens, Spokane.
Charles J. Bartleson, Spokane.
Ernest L. Kalb, Kennewick.
Schuyler Duryee, Everett.
B. F. Jacobs, Puyallup.
Edward H. Wright, South Bend.
Herbert C. Bryson, Walla Walla.
T. P. Fisk, Shelton.
W. E. Campbell, Hoquiam.
Charles M. Fouts, Seattle.
A. H. Imus, Kalama.
R. S. Ludington, Wenatchee.
C. M. Williams, Everett.
A. J. Craven, Bellingham.
R. W. Greene, Bellingham.
Fred W. Neal, Bellingham.
W. H. Pemberton, Bellingham.
C. E. Abrams, Bellingham.
D. W. Featherskile, Bellingham.
H. M. White, Bellingham.
J. B. Abrams, Bellingham.
George Livesey, Bellingham.
J. W. Kindall, Bellingham.
W. J. Griswold, Bellingham.
Thos. L. McFadden, Bellingham.
W. P. Brown, Bellingham.
T. D. J. Healey, Bellingham.
F. W. Radley, Bellingham.
Thos. R. Waters, Bellingham.
Frank Bixby, Lynden.
Walter Whitcomb, Blaine.
John J. Pinckney, Blaine.
L. E. Cade, Bellingham.
R. S. Lambert, Sumas.

Upon motion, the Report of the Committee on Membership was adopted.

MR. PRESIDENT—Gentlemen, the next matter on our program is the address of the President. (See Appendix.)

MR. PRESIDENT—We will now have the report of the Committee on Amendment of Law.

MR. SECRETARY—No report presented, Mr. President, and the chairman is not present.

MR. PRESIDENT—We will pass over this order and take up the report of the Committee on Uniform State Law, Mr. Chas. E. Shepard, chairman.

MR. SECRETARY—Mr. President, Mr. Shepard is in the East and he has asked me to read his report.

REPORT OF COMMITTEE ON UNIFORM STATE LAWS.

To the Washington State Bar Association:

Your committee on Uniform State Laws respectfully reports that during the past year considerable interest has been shown throughout the country in the subject submitted to this committee.

The reports of this committee necessarily consist for the most part in simply a report of progress. During the past year has been held the National Civic Federation's Conference on Uniform State Legislation. This conference occurred at Washington, D. C., on January 17-20, 1910, and was attended by a large number of delegates from many of the states of the Union. These delegates were not only lawyers but men in nearly every walk of life, professional, business and industrial, and included many men of national fame. Necessarily, the time of the conference was principally occupied in addresses on the general phases of the subject, and little that can be considered of practical effect or the determination of practical details was accomplished; but, nevertheless, the conference was of great value in arousing attention to the subject, which is one of the most important ones now before the American people.

At the same time there was held also at Washington the second National Conference of State Governors, who also devoted themselves largely to a discussion of subjects on which uniform legislation is desirable and feasible. The net result of these two conferences can perhaps be fairly stated as a striking increase of interest in the subject and an approach towards practical legislation on some of the most important topics which come within the purview of uniform legislation.

The Nineteenth Annual Conference of Commissioners on Uniform State Laws, nearly if not quite every one of whom is a lawyer, was held at Detroit, Mich., on August 19-23, 1909. Unfortunately no commissioner from this state was able to attend. The conference discussed the Uniform Partnership Act, the Uniform Stock Transfer Act, the Uniform Bills of Lading Act, and an Act Relating to Family Desertion and Non-Support, and an Act Relating to Marriages and Licenses to Marry. Of these proposed acts the first three were finaly recommended for passage; the Marriage Act and the Desertion and Non-Support Act were discussed and re-committed. The first tentative draft of a Uniform Incorporation Act was submitted but not discussed.

The present state of uniform legislation in the United States is now as follows:

1. Uniform Negotiable Instruments Act.
   It has now been passed by thirty-eight states and territories.
2. Uniform Sales Act.
   It has now been passed in the six states and territories of Arizona, Connecticut, Massachusetts, New Jersey, Ohio and Rhode Island.
3. Uniform Warehouse Receipts Act.
   It has now been passed in eighteen states.

The only one of these acts which is now on the statute books of Washington is the Uniform Negotiable Instruments Act, which is an admirable piece of legislation, and we believe thoroughly satisfactory to the bench, the bar and the business community. This committee recommends now that this Association do recommend to the Legislature at the coming session the enactment of the Uniform Sales Act, the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, all of which have been thoroughly discussed and are the result of the deliberate wisdom of many lawyers and of other experts on the subject.

All of which is respectfully submitted,

CHARLES E. SHEPARD, Chairman.

MR. PRESIDENT Does the association wish to discuss the report? Shall the report be adopted?

Moved and seconded that the report be adopted.

MR. HOLBROOK—I would like to ask if the passage of that motion will carry with it the adoption of the recommendation made in the report that this association recommend the passage of those uniform acts by our legislature?

MR. PRESIDENT—The Chair should think that it would.

MR. SULLIVAN—I move an amendment, that the report be received and placed on file. I do not think we should adopt this report and give it the sanction of our approval without some thought over it. If we receive it and place it on file, it is open to further thought and discussion and whatever the Association sees fit to do with it.

The amendment is seconded.

MR. PRESIDENT—Gentlemen, the original motion is to adopt the report of the committee. An amendment to this motion is offered that the report be placed on file. Are you ready for

the question? The question will now be upon the adoption of the amendment.

MR. BATES—My idea in seconding this amendment to the motion and supporting it is because we do not know the contents of these bills which are proposed to be recommended to the legislature to pass. I believe that this body should not adopt this report until these bills have been submitted to it and we know what they contain and what their different novations are, or, at least, submitted to a committee that would report a synopsis of the bills.

MR. JONES—Mr. President, in answer to Brother Bates, it seems it has already been submitted to the proper committee. These matters have been before the American Bar Association for various years. Many bills have been drawn and submitted to the national Bar Association and our committee has seen fit to report to us that they believe that these uniform bills ought to be enacted. Now, we can appoint another committee to report on that committee's report and another to report on that report of that committee. We have a very competent committee on this subject who has made a study of it. Mr. Shepard has spent a large part of his time the last five or six years upon nothing else, and I do not see why—except, perhaps, that some of us have not fully read the bills—that this matter should be allowed to go over. I doubt if there is any member of this body that can recite four paragraphs of our uniform negotiable instruments act, but that is no reason why that is not a good bill, and I think we should act now and adopt the report of our committee.

MR. SULLIVAN—My idea was that, if we received it and placed it on file, it would not prevent its adoption at some future session of this same meeting, and not to adopt a report, simply because it is reported here, as a matter of form, without anybody considering it. I think it is better practice to receive it and place it on file, and then, if we desire to take it

up afterward, to take it up and adopt it as the expression of the sense of the meeting.

MR. PRESIDENT—The question is on the amendment to the original motion.

The amendment is put and lost.

MR. PRESIDENT—The vote will now be upon the original motion.

MR. SECRETARY—Mr. President, Mr. Romaine is on that committee. I do not know whether he is in the hall.

MR. ROMAINE—I had not the pleasure and opportunity of meeting with the committee, but signed the report and, from communication with Mr. Shepard, I can only say that I am heartily in favor of the report of the committee.

The original motion is put and carried.

MR. PRESIDENT—Our next order of business is the report of the Committee on Federal Legislation, Honorable C. H. Hanford, chairman. (Applause.)

MR. HANFORD—Mr. President, and gentlemen, I thank you for this greeting, but it is rather premature. I was merely going to ask for an extension of time to report until this afternoon. The report is in the hands of the typewriter and, if the other members of the committee arrive at noon, as I hope, to whom it can be submitted, it will then be ready this afternoon.

MR. PRESIDENT—The Chair will assume that this will be satisfactory to the Association, and extend the time for the Committee on Federal Legislation to report. In looking at the program, I see that this properly comes in the afternoon, in any event. Our morning order of business is completed.

Upon motion, an adjournment was here taken until 2 o'clock p. m.

Pursuant to adjournment, 2 o'clock, p. m.

MR. PRESIDENT—The house will please come to order. The

next matter in our order of business is the report of the Committee on Federal Legislation, Honorable C. H. Hanford, Chairman.

(As Judge Hanford arose a band on the street began to play.)

JUDGE HANFORD—Mr. President, I will try to make my voice heard above the sounds on the street.

REPORT OF COMMITTEE ON FEDERAL LEGISLATION.

To the Washington State Bar Association:

Your committee on Federal Legislation respectfully submits the following report:

The new Federal Criminal Code became effective at the beginning of the present year.

The new Customs Appeals Court provided for in the much discussed Aldrich-Payne tariff law has been fully organized.

The following is a summary of the important enactments, other than appropriation acts, of the last session of Congress:

An act to repeal section 860 of the Revised Statutes, which prohibited the use of testimony and disclosures of witnesses, in criminal prosecutions against them.

An act relating to liens on vessels, which in terms supersedes all state laws creating liens on vessels, in so far as they purport to confer rights of action to be enforced by proceedings *in rem*, for repairs, supplies, or other necessaries.

An act amending the bankruptcy law.

An act requiring common carriers to report accidents and authorizing the Interstate Commerce Commission to investigate the same.

An act to supplement the law compelling railroads to equip their cars with safety appliances.

An act amending the employers' liability law, making jurisdiction of the United States Circuit Courts in cases arising under the law concurrent with the jurisdiction of state courts.

A joint resolution providing for the appointment of a commission to investigate the subject of employer's liability and workman's compensation.

An act to establish postal savings depositories.

An act giving precedence to equity causes arising under the anti-trust law, to expedite the speedy determination thereof.

An act creating an additional court, to be known as "Commerce Court."

An act to amend the laws for preventing collisions of vessels and to regulate equipment of motor boats.

An act to require apparatus and operators for radio-communications on ocean steamers.

An act to parole United States prisoners.

An act to parole juvenile offenders.

An act amending the immigration laws.

An act to amend the laws relating to the right of poor persons to litigate in the courts of the United States, to have consellors assigned to them and to prosecute writs of error and appeals, in *forma pauperis*.

An act creating a miners' lien law for Alaska.

An act providing additional protection for owners of patents.

An act providing for the issuance of bonds to the amount of $20,000,000 to complete projects for the reclamation of arid lands.

An act providing for the surveys of public lands within the limits of land grants, and for the forfeiture of unsurveyed land grants to railroads.

An act to prohibit and punish the transportation of women imported for immoral purposes.

An act to amend the law relating to suits against the government of the United States.

An act providing that entrymen for homesteads within reclamation projects may assign their interests.

An act to provide for agricultural entries on coal lands.

An act to amend the laws relating to the construction of dams across navigable rivers.

An act to license customs house brokers.

An act extending the time in which to contest mineral claims in Alaska.

A joint resolution to enable the states of Oregon and Washington to agree upon the boundary lines between said states.

An act to establish in the department of the interior a bureau of mines.

An act to amend the law authorizing the sale of unallotted lands in the Yakima Indian reservation.

An act to prohibit and punish the adulteration or misbranding of Paris Greens and other insecticides and fungicides.

An act to promote the efficiency of the militia.

An act to amend the laws relating to bonding and surety corporations.

An act authorizing the President to temporarily withdraw from settlement, location, sale, or entry, any of the public lands of the United States, including the District of Alaska, and to reserve the same for water power sites, irrigation, classification of lands, or other public purposes.

An act to protect the seal fisheries of Alaska.

An act authorizing the withdrawal from entry of areas of public lands, embracing lands which any state or territory proposes to select to make up its quota of granted lands.

Congress has under consideration a bill reported by a committee of which Senator Heyburn is chairman, which is a proposed codification and revision of the federal judiciary acts.

Referring to this proposed legislation, a committee of the New York County Lawyers Association has in a circular letter suggested that, "the time seems propitious for a discussion of improvements in the existing equity practice of the federal courts."

The membership of your committee consists of three United States District Judges and two United States Senators, representing our state, and by reason of official duties it was impracticable for us to hold a meeting to consider this important subject and we are unable as a committee to make any recommendation for your consideration. Reform in the equity practice of the federal courts is desirable, and on the other hand there is danger that ill-advised legislation may be mischievous. Rigid rules of practice, rigorously enforced, may have a strong tendency to delay and obstruct rather than to aid the administration of equitable jurisprudence. There is nothing more irksome than the contentions of lawyers over technicalities in equity causes, for it seems incogruous to permit a technical rule to defeat a substantial right in a forum especially ordained and established to protect substantial rights. The system we have can only be made better by being made more simple, so as to eliminate useless formalities and verbiage. Probably no attempted reform in practice by legislation will equal in beneficial results the raising of the standard of intelligence and efficiency of lawyers and judges.

Mr. William H. Gorham, a member of this Association and of the committee on Federal Legislation of the Seattle Bar Association, is entitled to credit for having prepared a bill for an act to diminish the expense of proceedings on appeal, writs of error or of certiorari, and a very exhaustive argument demonstrating the benefits to lawyers and litigants to be derived from its enactment by Congress. A copy of this bill is appended to this report. The bill was supported by our Senators and advocated by Mr. E. C. Hughes, a former president of this Association, with the gratifying result that it was approved by the Judiciary Committee of the United States Senate

and on the recommendation of that committee was passed by the Senate without alteration. There can be no objection to the bill except from a very few persons who may be deprived of profits from the unnecessary expenses of litigation in the Appellate courts. Therefore, there is good reason to expect that if it shall not be neglected the bill will be passed by the House of Representatives at the next session of Congress. Our state is represented in the House by three lawyers, who will serve their constituents well by giving the bill their active support, and we recommend that this Association adopt the resolution hereto appended.

Pierce's Federal Code, recently published, is a complete compilation and condensation into a single volume of all the existing general and permanent statutes of the United States, and a work of the highest merit. His success in accomplishing so stupendous a task certainly proves that Colonel Pierce, the compiler, is a man of extraordinary genius in his special branch of the profession of law book making.

Respectfully Submitted,

C. H. HANFORD, *Chairman.*

I will not stop to read that bill, but I will explain the principles and substance of it. It provides for dispensing entirely with a transcript to be sent from the court below to the appellate court, and, in lieu of that, it provides that the parties are to have printed a specified number of copies of the record, all that is necessary to go to the appellate court, under the control, of course, of the courts as to the style of printing, to conform to the requirements of the courts. One copy of that printed record to be certified by the clerk of the lower court, and in addition to that, there is to be sent up such original exhibits and evidentiary matter as the court may require or the parties agree upon by stipulation. That saves the cost of a transcript and will have, undoubtedly, an economic value in saving the cost of printing. It can be done locally for less than the printing costs when done under the direction of the clerk of the appellate court, where he charges, in addition to the cost of printing, a per folio fee for supervising the printing, which amounts to a tax on litigants, as

that fee, collected by the clerk, at least in this circuit, constitutes a fund for providing a library for the Circuit Court of Appeals.

(Continues the reading of report, with appended resolution.)

RESOLVED, By the Washington State Bar Association, that the bill passed by the Senate of the United States providing for the reduction of expenses of litigation in the United States Supreme Court and the United States Circuit Court of Appeals, be and the same is hereby approved, and that the Representatives of the State of Washington in the House of Representatives of the United States, be and they are hereby requested to actively and earnestly endeavor to secure completion of its enactment.

The report and its recommendations were, upon motion, adopted and the secretary instructed to send a copy of the resolution to each member in congress from this state.

A copy of the bill is as follows:

A BILL

To Diminish the Expense of Proceedings on Appeal and Writ of Error or of Certorari.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That in any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to, or by writ of error from, a United States circuit court of appeals the appellant or plaintiff in error shall cause to be printed under such rules as the lower court shall prescribe, and shall file in the office of the clerk of such circuit court of appeals at least twenty days before the case is called for argument therein at least twenty-five printed transcripts of the record of the lower court and of such part or abstract of the proofs as the rules of such circuit court of apeals may require, and in such form as the Supreme coure of the United States shall by rule prescribe, one of which printed transcripts shall be certified under the hand of the clerk of the lower court and under the seal thereof; and shall furnish three copies of such printed transcript to the adverse party at least twenty days before such argument. Provided, that either the court below or the circuit court of appeals may order any original document or other evidence to be sent up in addition to the printed copies of the record or in lieu of printed copies of a part thereof; and no written or typewritten transcript of the record shall be required.

Sec. 2. That in any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to or by writ of error

or of certiorari from the supreme court of the United States, in which the record has been printed and used upon the hearing in the court below and which substantially conforms to the printed record in said supreme court, if there have been at the time of filing the record in the court below twenty-five copies of said printed record, in addition to those provided in the preceding section, lodged with the clerk of the court below, one copy thereof shall be used by the clerk of the court below in the preparation and as a part of the transcript of the record of the court below; but no fee shall be allowed the clerk of the court below in the preparation of the transcript for such part thereof as is included in said printed record so lodged with him. And the clerk of the court below in transmitting the transcript of record to the supreme court of the United States for review shall at the same time transmit the remaining uncertified copies of the printed record so lodged with him which shall be used in the preparation and as a part of the printed record in the supreme court of the United States, and the clerk's fee for preparing the record for the printer, indexing the same, supervising the printing and binding and distributing the copies shall be at such rate per folio thereof, exclusive of the printed record so furnished by the clerk of the court below, as the supreme court of the United States may from time to time by rule prescribe; and no written or typewriten transcript of so much of the record as shall have been printed as herein provided, shall be required.

MR. PRESIDENT—We will now have the report of the committee on publications, Mr. E. G. Kreider, Chairman.

MR. SECRETARY—Mr. President, Mr. Krieder is not in the state and so whatever report is made I will have to make. The duties of the Committee on Publication are to take the papers and have them published, and the committee last year, for the first time, had the proceedings bound in substantial covers and also added some other features to it. Each person delivering an address was furnished one hundred copies of his address, printed separately. The constitution and by-laws of the Association were also printed separately. The expenditures incident to these publications were included in the report submitted this morning. I want to say that there were some errors in the published report. A noticeable one was that Hon. J. A. Kellogg was left out as a member of the Executive Committee. His name should appear in that list.

Upon motion, the report was adopted.

MR. DOVELL—I move that the Secretary be instructed that, before he shall cause to be printed the proceedings of the meeting of the Bar Association, that he shall submit to each member who is reported to have made remarks, the report of the stenographer for correction.

The report was seconded, by Mr. Rummens.

MR. SECRETARY—I wish to say that if the gentlemen knew the trouble the Secretary has along that line, he would not make that motion. I have been Secretary for eight or ten years, something like that, and one of the greatest worries I have is to get a paper back after I once send it to the man who delivered the address. Last year I sent them out, and they sometimes came back in worse condition then they went away. They will always be sent out, but I wish you would incorporate in the motion that there be some penalty attached for not promptly returning them.

MR. DOVELL—They are responsible for that, if they don't return them. It is their own fault. My idea was that simply because a member presumes to arise in the Association meeting and make a few remarks there is no reason why he should be reported in the proceedings as having made an ass of himself and his words incorrectly reported. I have every confidence in the Secretary and I know he tries to do his best, and I presume he does send out a stenographic report. If he does send it out to a member who has made remarks and he does not correct it or see that what is reported as said by him is what he actually said, then it is his own fault.

MR. SECRETARY—Do I understand you that copy should be sent to each person who makes remarks or each person who makes an address?

MR. DOVELL—Each person who makes extemporaneous remarks.

MR. SECRETARY—Mr. President, several years ago that was

done and the next year they denounced it and insisted on it going in verbatim.

The motion was put and lost.

MR. SECRETARY—Mr. President, may I say, in this connection, anybody who shall make remarks during this meeting and who desires to edit his remarks, if he requests it, he may do so.

MR. PRESIDENT—Our next order of business is an address on Admiralty Jurisdiction as conferred by Clause 1, of Section 2, Article III, of the Federal Constitution, by Mr. Ira Bronson, of Seattle, who will now address you.

MR. BRONSON—Mr. President and gentlement of the State Bar Association: I do not feel like making any apologies for this paper because a large part of this paper is made up of utterances of the United States Supreme Court. I do feel like apologizing for the fact that I have had to cut those opinions up in order to bring them within the reasonable limits of your patience. (See Appendix.)

MR. PRESIDENT—Our next order of business is the Report of the Committee on Judiciary and Judicial Administration, Mr. E. C. Hughes, of Seattle, Chairman.

MR. SECRETARY—Mr. President, the Committee has handed me the following report·

REPORT OF COMMITTEE ON JUDICIARY AND JUDICIAL ADMINISTRATION.

To the Washington State Bar Association:

We, the undersigned, representing a majority of the Committee on Judiciary and Judicial Administration, do beg leave to report as follows:

1. We are in favor of and would recommend a complete revision of the judiciary system now prevalent in this state, and pending that revision and change we are in favor of a law increasing salaries of the Superior Court judges of this state to the sum of six thousand dollars ($6,000.00) per annum. We would, therefore, recommend that a committee be appointed to prepare such bills or amendments as may be necessary to carry these recommendations into effect.

2. We would recommend that this Association endorse the Moon bill, providing for the increase of salaries of the Federal Court judges.

MAURICE LANGHORNE,
RICH. SAXE JONES,
JEREMIAH NETERER.

Upon motion, the report and the recommendations therein contained, was adopted.

MR. JONES—Mr. President, that report carries with it a recommendation appointing a committee. I move you that a committee of five be appointed by the Chair, of which Judge Neterer, of this county, shall be chairman, to carry into effect the resolution. The reason I mention Judge Neterer's name is that he has given a great deal of time and study to the matter of the reform of our judicial procedure, and I think it would be a great advantage to the committee to have him act as its chairman.

The motion being seconded, was put to the house and carried.

MR. PRESIDENT—I shall assume that the next President of the Association will appoint this committee, after further consideration satisfactory to himself, along with the other committees. The next order of business is the Report of the Committee on Legal Education and Admission to the Bar, James M. Gephart, Chairman.

MR. GEPHART—Mr. President, and members of the Bar Association:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the State Bar Association:

The Committee on Legal Education and Admission to the Bar begs leave to make the following report:

The State of Washington appears to be a Mecca for the young lawyer just admitted to practice his profession, and the flood of immigraion of professional men to this state seems to be incessant.

Doubtless many come to this state from the east believing that the legal questions arising here are simple and comparatively unimportant,

and that competition at the bar is not sharp, and that in a comparatively new country the need for great and learned lawyers is correspondingly small. Those who have practiced here, however, know that the legal questions arising are not only of great and vital interest, but peculiarly complicated and difficult and that no state has greater need for lawyers who are not only capable and learned in their profession, but honorable as well.

The Committee is led to believe that in the past there has been too strong a tendency on the part of the bar of this state to forget that the chief asset of a lawyer is learning and his reputation, and that the chief purpose of the law is not a profession in which to make money; that it is not, in the truest and best sense, a commercial profession. Until recently but little attention has been given to the qualifications of those seeking admission to the bar of this state. Through the action of this Association certain laws were passed by the last legislature which have assisted immensely in the upbuilding of the profession. But there is room for much more advancement in this respect, and your Committee begs to plead for such advancement. The laxity of our laws in the past has admitted many to the profession who do not look upon it with the respect in which it was held by the "old school," and it is high time that this Bar Association should take action in all respects looking towards the elevation of the profession and with a view to making it such that all people of the state will look up to and honor it rather than ridicule and belittle the character of those who are members of it.

Since the legal profession is a learned one, we know of no way to so effectually raise its standard and elevate it in the esteem and eye of the people as to start at the foundation by admitting to practice only those who are properly educated to perform the arduous tasks of the profession.

The committee is of the opinion that this Association should go upon record as favoring law school educations. We believe that men who have studied their profession outside of a law school are not generally so well equipped as those who have been taught in the schools the fundamental principles underlying the law. In an effort to raise the standard of the profession in this state, the Committee begs to submit the following suggestions:

Objections have been made, and we believe with some justice, to that portion of the present law as passed by the last legislature, which requires each applicant for admission to the bar to file with the Clerk of the Supreme Court, at least two years before such examination, a notice of his commencement of the study of law. Your Committee believes that this provision in the law has created and will continue to create an unnecessary hardship upon certain per-

sons, and we believe that such hardships could be overcome if the law were so amended as to eliminate from this requirement applicants who present diplomas from law schools. And we therefore recommend that Section 4 of Chapter 139 of the Laws of 1909 be amended to conform with this recommendation.

Your Committee is firmly of the belief that the study of the law for a period of two years in a law office, or anywhere, is insufficient to prepare such person for the practice of the law. The law should provide that the applicant shall present an affidavit of some member of the bar of the Supreme Court to the effect that the applicant has regularly and attentively studied law under the direction of the affiant for a period of not less than three years, or, if graduated from a law school having a curriculum equal to that of the law school of the Washington State University, such affidavit shall not be required upon presentation of his diploma from such law school. Many of the law schools at the present time do not graduate their students inside of a three year course. It is hardly possible for the person who studies law in some attorney's office for two years to become as proficient and well grounded in the law as he who takes a three year course in a good law school. Under the law as it existed in 1907 in twenty-three states, a three years' study of the law was required before the applicant would be admitted to an examination; ten states fixed the period at two years, most of which were southern states; in other states no limitation was fixed. Time and again has the American Bar Association passed resolutions to the effect that at least three years' study of the law should be required before the applicant would be admitted to an examination.

Your Committee begs leave to here call attention to the recommendation of the Committee on Legal Education,appointed by the American Bar Association, relative to the length of time of study required of students seeking admission. In paragraph 11 of its report, the Committee states:

"No student candidate shall be eligible for admision to the Bar until he shall have devoted four years in preparing for call to the Bar, either by the service of a four-years' clerkship in an approved law office, or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice."

We quote this as an indication of the tendency for a longer period of study.

Your Committee therefore recommends that Section 4 of Chapter 139 of the Laws of 1909 be amended so as to require that persons

studying law must have so studied for a period of not less than three years before they will be permitted to take the examination.

Persons who have graduated from the law schools outside of the State of Washington or have studied law elsewhere than in this state, while in a general way they have sufficient knowledge to be admitted to the bar, yet coming fresh into this state it is impossible that they can be acquainted with the many laws, statute and otherwise, which are peculiar to this state, and it is impossible that they shall have become acquainted with the practice prevailing in this state. It appears to this Committee that before one should be permitted to practice his profession here he should at least have some information concerning the laws and practice peculiar to this state.

It has been the habit and custom in this state for the Examining Board to permit one who has taken the examination and been rejected, to take another examination at the next succeeding term of court. The result of this practice is that the rejected applicant for three month studies solely for the purpose of passing the next examination, guessing as nearly as possible the questions which may be asked, cramming under the direction of some person astute in that respect. If the applicant has been fortunate enough to guess closely the questions which may be asked, he is likely to pass, with an unsatisfactory paper. If an applicant's examination is so inferior as to compel the Examining Board to cast aside its sympathy and reject him, it is hardly possible for him to learn enough law during the next three months to justify him in being turned loose upon the public. Your Committee therefore recommends that an applicant taking the examination and failing to pass shall not be permitted to again take the examination at the next ensuing term of court.

It has been the practice in this state not to allow the questions submitted at the examination to become public, or to be taken from the examination room. Your Committee is of the belief that this is a mistake. The applicant should be permitted to take the questions away with him that he may study them at his leisure. Besides, the public is entitled to know what character of examination is being given; there ought to be nothing private about it. Every lawyer in the state should have the privilege of seeing the questions after they have served their purpose and thereby secure the privilege and opportunity of criticising or commenting upon the manner of the examination. In any event the rule cannot be successfully carried out; in spite of whatever may be done, the questions, or the substance of them, will become public, at least in a garbled manner and condition. We therefore recommend that after the examination is completed, the questions may become public and may be given out to whomso-

ever desires them. More than once the American Bar Association has disapproved of the rule of secrecy promulgated and carried out in this state and we believe this Association should go on record as disapproving of such ruling.

In order that the recommendations of your Committee may be gotten before the Association in a condensed form, we here present and recommend the passage of the following resolutions:

4. BE IT RESOLVED, That it is the sense of this Association that that portion of Section 4, Chapter 139 of the Laws of 1909 which provides that an applicant shall not be permitted to take the examination unless he shall have filed with the Clerk of the Supreme Court two years before his examination, a notice of his commencement of the study of the law, be amended so that the same will not apply to those who present at the time of the examination certificates of graduation from law schools outside of the state of Washington.

2. BE IT RESOLVED, That it is the sense of this Association that that portion of Section 4, Chapter 139 of the Laws of 1909, which provides that an applicant to take the examination for admission to the bar shall have studied law two years before such examination, be amended so as to provide that no person shall be permitted to take the examination unless he shall present the affidavit of some member of the bar of the Supreme Court of this or any State, or the Dean of a law school of approved standing, to the effect that the applicant has regularly and attentively studied law under the direction of such affiant for a period of not less than three years.

3. BE IT RESOLVED, That it is the sense of this Association that a law should be passed providing that before a certificate of admission shall be issued to any person taking the examination, such person must present due proof that he has resided in the State of Washington and there attentively studied law at least one year under the direction or in the office of some member of the Bar of Supreme Court of this state.

4. BE IT RESOLVED, That it is the sense of this Association that a law should be passed providing that no person taking the bar examination and who has been rejected because of failure to pass the examination, shall be permitted to again take such examination at the next succeeding term of the Supreme Court.

5. BE IT RESOLVED, That it is the sense of this Association that the practice heretofore providing the keeping secret the list of questions upon which any examination for admission to the bar has been

had, is unwise, and that after such examination has been had such questions shall be made public.

Respectfully submitted,

J. B. BRIDGES,
J. STANLEY WEBSTER,
JAMES B. MURPHY,
JOHN T. CONDON,
JAMES M. GEPHART,
Chairman of Committee.

THE PRESIDENT—Gentlemen, you have heard the report of the committee. What is your pleasure?

MR. ROBERTS—Mr. President, it may be that some of us will approve some sections of the resolution and disapprove others, and I suggest that they be taken up in order and discussed as they are reached.

THE PRESIDENT—The Chair will assume authority to do that. It is evident that there are a number of propositions involved in this and some might not wish to vote for one who would desire to vote for the others.

The first recommendation which you have to consider is:

"Be it resolved, That it is the sense of this Association that that portion of section 4 Chapter 139 of the Laws of 1909 which provides that an applicant shall not be permitted to take the examination unless he shall have filed with the Clerk of the Supreme Court two years before his examination a notice of his commencement of the study of the law, be amended so that the same will not apply to those who present at the time of the examination certificates of graduation from law schools outside of the State of Washington."

MR. LANGHORNE—Now read the third one, please, Mr. President, because it seems to me that they are somewhat in conflict.

MR. PRESIDENT—"Be it resolved, That it is the sense of this Association that a law should be passed providing that before a certificate of admission shall be issued to any person taking

the examination, such person must present due proof that he has resided in the State of Washington and there attentively studied law at least one year under the direction or in the office of some member of the bar of the Supreme Court of this state."

There is evidently an element of conflict between the two.

MR. LANGHORNE—I cannot tell yet whether there is or not. I think there is, but it is hard for me to tell without having them both before me.

MR. FISK—Mr. President, I would like to ask the chairman of that committee if it is the intent of that committee that a person coming from another state, a graduate of a law school, shall be required to read law a year before seeking admission to the bar?

MR. GEPHART—Yes, it is; that is the purport of that resolution.

MR. FISK —I think it should be amended, then.

MR. GEPHART—I do not believe there is any conflict at all. I think if the President will read that——

MR. LANGHORNE—Does the present law permit a person to practice now who presents a certificate from a law school outside of the state, without examination?

MR. GEPHART—It does not.

MR. CONDON—Mr. President, I have had quite intimate association with the discussion that has arisen, and it has settled around my head somewhat, and I would like to get before this Association, as fairly as I can, what seems to be the result of this enactment requiring to give notice, and the purpose of it. I think the law, as drafted, went farther than any purpose that was attempted to be served by it and did cause a great deal of injustice to a number of men. Speaking now to the first proposition: There has been an agitation for some time, and it has grown out of the practice that has existed in a number of states, principally Pennsylvania, where

they have required some formal notice when a man undertook the study of law, the purpose of that being, apparently, so that we would have men come to the study of law with some sort of serious thought rather than having a man hanging around a law office or in the neighborhood of law offices and then conceive the idea that he would like to be a lawyer, and then get a certificate from some half-baked lawyer that he had studied law two years, etc. It was to prevent that sort of thing that we adopted this rule in this state. When we did it, we did it with the usual lack of foresight in the passing of statutes and we failed to take into consideration all these men that are graduates of the best law schools in the East, and we failed to take into consideration another feature, viz.: that in most of those states where they have that provision for registration before they commence the study of law, they have also another provision, that the registration in one state would be effective and can be transferred to another state, so that, if a man seriously undertook the study of law in New York and filed his notice and then came to this state—in a law office, now—he could transfer that notice to this state and it would be effective and he could pursue his study in this state and become admitted here without waiting another period of time to give that notice. Under the same provision, if a man entered one of the best law schools in the East and graduated there, that shows the same serious intention and we should not have the rule apply to this man. The only thing that I can see at present and since joining in this report is that it seems to me our recommendation at this point does not go far enough. It simply enables those men who have registered in law schools and graduated from law schools in the East, to allow that registration to become effective here. Now, in addition to that, we ought to do what the National Bar Association is doing in their recommendation, which has been sent around, I think, to all the members of the Bar Association.

In their Rule 7, which I will read (it is a little dark for me to read here) but the effect of that is registration, and there they require three years' registration. I assume that members of the American Bar Association are familiar with this. (Holding up pamphlet.) This is an extract from the last report of the American Bar Association. It contains a set of uniform rules for admission to the bar applicable to the country generally. It has been before the American Bar Association twice and is coming up for formal adoption this year in this form, and I have no doubt it will be adopted as set out. There they require a three-years' notice, instead of a two-years' notice, as we have had before, and, in addition to that, they have this element of registration in the law school and registration in the law office in the East and allow it to be transferred to this state, and I believe that what we ought to do is to get in line with these recommendations of the American Bar Association in that respect, and, although joining in this report, I want to move to adopt this Article 7, on page 6, and ask the Secretary to read it.

The Secretary reads:

"Students shall be officially registered at the commencement of their course of preparation for the bar, upon report of the State Board as to fitness. The board's report shall be based upon its inspection of the candidate's credentials establishing that he has passed the required academic examination. The registration shall be with the clerk of the highest appellate court. A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred. *Nunc pro tunc* registration may be permitted according to the present New York practice, which allows such registration only when the candidate had the requisite education at the date as of which he desires to be registered, and in case where there has been no laches on his part."

MR. CONDON—Now, Mr. President, continuing, that gives opportunity to discuss all these cases of injustice that have

arisen. They have all come to me because they had the idea that I had some sort of an open sesame to get them admitted to the bar and by some sort of short course. There are many cases of injustice that have arisen. I have in mind a young man who is in Judge Grosscup's office who, through some misfortune, failed to get his notice filed on a particular day. It was filed, as I recollect, almost on the next day. That is a case of misfortune that ought to be corrected and there ought to be some power in the court to correct it. I appeared once before the Supreme Court and with reference to another application for a young man who had been granted a certificate. He was in the same condition as the young man from Judge Grosscup's office, but the committee did not notice the defect until after he had been given a certificate. He was allowed to keep his certificate because of the injustice that might have been done in taking it back from him. The Supreme Court was of opinion there was no harm in the interpretation of this statute in order to do justice in this particular case. It seems to me we might avoid all those objections best by the adoption of this Section 7 which has been read, and, for that reason, I move its adoption as a substitute for this one provision we have been considering.

The motion received a second.

MR. GEPHART—Before this is put, it seems to me that, instead of substituting that article for Resolution 1, it should be put in as an additional part of the resolution, if anything, because I do not believe it would be antagonistic at all to the resolution. As a matter of fact, I want to say to this Association that that matter was discussed pretty fully by various members of the committee, but there have been some objections raised to the law as it now stands and there was some doubt as to whether or not it would be proper at this time to frame a resolution of that kind. However, I am very much in favor of it and always have been, and I believe that the

provisions of the Pennsylvania law requiring academic examination three years before examination should be required. I fully approve of the resolution as a substitute, but I believe it should be put in as an additional part of the resolution.

MR. LANGHORNE—It seems to me, Mr. President, that there is some apparent conflict between the first and third resolutions as contained in this report. I do not know whether there is or not, but I think that there is. The first resolution provides that Section 4, Chapter 139, Session Laws 1909, be amended so that the time limit of two years shall not apply to those who, at the time they present themselves for examination, have a certificate of graduation from law schools outside of the State of Washington. Now, it seems to be the intent of that resolution, subdivision one, that a residence shall not be required in this state; that is to say, that a person coming here to take an examination and who presents a certificate from some law school, shall not be required to register his notice of examination two years prior to that time. Now, in subdivision three is the following:

"It is the sense of this Association that a law should be passed providing that before a certificate of admission shall be issued to *any* person"—rather sweeping language—"taking the examination, such person must present due proof that he has resided in the State of Washington and there attentively studied law at least one year under the direction or in the office of some member of the bar of the Supreme Court of this state."

If these two resolutions should be enacted into law and they should come before the Supreme Court, the Supreme Court would certainly have to make some law in order to reconcile them.

MR. SECRETARY—I think there is no conflict in them in this, that the present law provides that a notice must be filed at least two years before the applicant presents his application to take the examination. A graduate of a law school outside

of this state must file that notice the same as anybody else. Now this, as I interpret it, means that he does not have to file that notice under the first resolution but, nevertheless, he must be a resident of this state one year before he can be admitted.

MR. GEPHART—That is the interpretation.

MR. LANGHORNE—It says, too, that he must read law one year.

MR. GEPHART—He must have studied law for one year in the state.

MR. QUINBY—Isn't that provision also applicable to attorneys practicing in other states and coming to this state? Would they not be required to have a residence here a year and studied?

MR. GEPHART—I should say that the resolution does not apply to those who have practiced in other states, but with reference to those who have been graduated from law schools and other schools outside of the state and coming here for examination. It does not have reference to practitioners.

JUDGE CROW—As I understand the present resolution, no one can take the examination for admission to the bar of this state unless he has filed the notice of his intention to read law or study law three years before examination. Prior to Januaary 1st last no notice was required, provided the applicant had studied two years; it is two years under the present law. They propose to make it three years. Now, if a graduate of one of the best law schools of the United States would come into this state and undertake to take an examination, he could not do it because he has not filed that notice. As I undestand this first resolution, it intends only to do away with the necessity of filing that notice. The second resolution pertains to another proposition entirely; that, for the purpose of becoming acquainted with our present laws, they must study law in this state before taking the examination, notice or no

notice. I do not see any inconsistency to it at all. I am opposed to the third resolution and I am in favor of the first.

MR. CONDON—For that reason they were separated so we could pass upon them by themselves. They are meant to deal with different things, and if the opposition wants to cut out the third proposition they can. It takes another course then and we can act on it separately.

MR. PRESIDENT—I think the Chair will rule that the debate must cling closely to the first resolution, inasmuch as that is all that the motion covers. Now, the first resolution, upon which the motion is offered, provides that an applicant shall not to be permitted to take the examination unless he has complied with certain conditions, and it is limited wholly to the question of who shall take the examination for admission to the bar.

MR. GROSSCUP—I understand that Professor Condon's motion is before the house to substitute for the resolution offered by the committee.

MR. PRESIDENT—For the first resolution; that is the question before the house. The first resolution is the only one we are considering, Mr. Grosscup. This is to substitute Rule 7 for the recommendation contained in the first resolution.

MR. GROSSCUP—I want to say, Mr. President, that I am most heartily in favor of the substitute. It seems to me that the rule of the present statute works an intolerable hardship. A man who has been thoroughly read in any office in another state, who has all the qualifications of a lawyer although not admitted to the bar, who comes here and seeks to become one of our citizens and engage in one of our professions, is barred from his chosen avocation, under the existing law, for two years. It seems to me that the present law subordinates the primary idea of requiring qualifications to the secondary notion of proof of his ability to take the examination to prove his qualification. I am in favor of stringent qualifications, but

if a man has the qualifications he should be admitted to the bar; if he has not, he should be rejected. This rule which requires him to come into this state and give two years' notice —because the present law says he must be a citizen of the state, he must have had an intention, at least, to practice in this state for two years, to give the notice—it is an intolerable hardship which should be done away. The rule which is proposed by the substitute is much more reasonable, and I am most heartily in favor of some modification, at least, of this present enactment.

The motion to substitute Rule 7 of the American Bar Association for the first resolution in the report of the committee was put to the house and carried.

MR. PRESIDENT—Now, gentlemen, the second resolution is before the house:

"Be it resolved, That it is the sense of this Association that that portion of Section 4, Chapter 139, of the Laws of 1909, which provides that an applicant to take the examination for admission to the bar shall have studied law two years before such examination, be amended so as to provide that no person shall be permitted to take the examination unless he shall present the affidavit of some member of the bar of the Supreme Court of this state, or the Dean of a law school of approved standing, to the effect that the applicant has regularly and attentively studied law under the direction of such affiant for a period of not less than three years."

MR. JONES—I would like to ask a question. Suppose a man had studied law in two places, under two attorneys, how would one affidavit cover it?

MR. GEPHART—I presume he could have the certificate from two members of the bar. If he is a non-resident, he must have studied law for the period of one year, provided he is a graduate of a law school.

MR. JONES—Suppose a party had studied law in Bellingham for a year and in Seattle, or some other office, for a year, and

in Tacoma or any other office, for a year, it would take three affidavits to cover your resolution.

MR. GEPHART—That would be customary, and I presume it would be sufficient.

MR. PRESIDENT—The Chair would like to say that it would be preferable to have some motion discussed to an end rather than piecemeal it out for half an hour before the motion is stated and then after the motion is stated.

MR. GROSSCUP—I do not understand whether that excludes a man from examination who has regularly read law in another state.

MR. PRESIDENT—It does not. It reads: "Be amended so as to provide that no person shall be permitted to take the examination unless he shall present the affidavit of some member of the bar of the Supreme Court of the state, or the Dean of a law school of approved standing, to the effect that the applicant has regularly and attentively studied law under the direction of such affiant for a period of not less than three years."

MR. GROSSCUP—But suppose he has read law in a foreign state, and in an office and not in a law school, is he excluded then?

MR. PRESIDENT—He will be, yes. The idea is that one of the later resolutions is to make provision for that, and possibly the former resolution, under the certificate that can be transferred from another state into this state.

MR. GROSSCUP—That is just what I want to call out. The first resolution passed, it seems to me, is in conflict with this. I move, Mr. Chairman, we add to that, in effect, that he must have read law for a period of three years, so as to include reading anywhere in America in place of the State of Washington. He must present an affidavit that he has read law three years. I move that we strike out the words "in the office of some member of the bar of the Supreme Court of this state," striking those words out.

MR. JONES—There being no second to that, Mr. President, I move that this resolution be referred to a new committee, the committee to report upon it at this session.

The motion received a second.

MR. EDGE—If I may be permitted, we have got this matter here and we might as well settle it now. I think Mr. Grosscup's idea is all right to the single extent that the intent of that is to permit him to get credit for reading anywhere in the United States. I think we are all advised as to whether or not we are in favor of or against the proposition, and I do not believe it should be re-referred to some committee to come back again for discussion.

MR. SECRETARY—I would like to call attention to the fact that you have substituted Rule 7 of the Report of the American Bar Association for the first resolution, which provides for that very thing that Mr. Grosscup is contending for, providing he has registered in that state, but he must have registered and then transferred the register from that to this state.

MR. CONDON—That register is different, very, from the certificate that you have cited. The register is simply a formal notice that you intend to study, and the certificate is to the effect that you have studied.

MR. PRESIDENT—The question is upon the motion to re-refer the whole question to a new committee. Those in favor of the motion will say Aye; those opposed, No. The motion is carried.

MR. SECRETARY—Does that take simply that resolution or the whole thing?

MR. PRESIDENT—I think it takes the whole thing. The motion was to re-refer the whole thing.

Pending the appointment of the new committee, a recess was here taken.

MR. PRESIDENT—Gentlemen, come to order, please. The

Chair will appoint Mr. Grosscup, Mr. Bell, the Attorney General, and Mr. Richard Saxe Jones as the committee and will assume the responsibility of asking that these gentlemen will act in conjunction with the old committee, if satisfactory to the Association. The next matter to come before us is the Report of the Committee on Community Property, Mr. Frank T. Post, Chairman.

MR. SECRETARY—Mr. President, no member of the Committee on Community Property is present. I understand Mr. Post has sent his regrets that he could not be here. He is the chairman of the committee. He asks that his report be adopted, however. The report was filed a year ago, but was put over until this meeting.

REPORT OF COMMITTEE ON COMMUNITY PROPERTY.

To the President of Washington State Bar Association:

Dear Sir: The Special Committee appointed to recommend changes in the community law of this state, have prepared three bills, which are hereto annexed, and respectfully recommend their approval by the Association and that the Association recommend their adoption to the legislature, and that the President of the Association forward copies thereof to the Governor and to the chairman of the judiciary committee of each house with the recommendation of this Association. Respectfully submitted,

F. T. POST,
T. L. STILES.

ACT ONE.

An Act relating to the descent and inheritance of community property and amending Section 4621 of Ballinger's Annotated Codes and Statutes of Washington, being Section 2703 of Pierce's Washington Code.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 4621 of Ballinger's Annotated Codes and Statutes of Washington, being section 2703 of Pierce's Washington Code, be and the same is hereby amended as follows:

Sec. 4621. Upon the death of the husband, one-half of the community property shall go to the surviving wife subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband subject also to the com-

munity debts, and in the absence of such disposition, shall go, subject to the community debts, to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants then the said community property shall all pass to the survivor to the exclusion of collateral heirs, subject to the community debts, and the charges and expenses of administration.

Upon the death of the wife the entire community property, without administration, belongs to the surviving husband.

ACT TWO.

An Act in relation to the power of all persons and corporations having the record title to sell and mortgage real property and protecting purchasers thereof and repealing Chapter CLI of the acts of the legislature of this state, approved March 9, 1891, entitled, "An Act to protect innocent purchasers of community real property."

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Every person, married or single, and every corporation having in his, her or its name the record legal title to any real property in this state as the same appears upon the real property records of the county wherein it is situated, is empowered to contract to sell, convey or mortgage the same without the joinder of the husband, wife, *cestui que trust*, principal or any other party interested therein, to a purchaser or mortgagee for a valuable consideration; and the deed or mortgage of such holder of the legal title shall be sufficient to convey to and vest in the purchaser, or to pledge to the mortgagee, as the case may be, the entire estate in such real property free and clear of the claims of any other persons whatsoever, not of record in the office of the auditor of such county, at the time of such conveyance or mortgage: *Provided*, That real property occupied as the homestead of married persons shall not be conveyed or mortgaged without the joinder of husband and wife in the instrument of conveyance.

SEC. 2. Any person or corporation who may have an interest in any real property in this state, the record legal title to which is held by another, may protect such interest from sale or mortgage under the provisions of section 1 of this act by causing to be filed with the county auditor for record in the deed record books of the county in which such real property is situated, a cerified declaration of the interest claimed with the name of the holder of the record title and a description of the property against which the claim is asserted,

and from the time of such filing and recording, every grantee or mortgagee of such real property shall be charged with notice of the claim of the declarant; and in the case of community real property, no conveyance or mortgage thereof shall be made by either husband or wife without the joinder of the other, so long as the declaration of interest above mentioned is of record and uncancelled.

Sec. 3. A declaration of interest may be cancelled by the filing for record of a declaration of cancellation, referring with accuracy sufficient for identification to the declaration of interest, and acknowledged as a deed for real property; the same to be recorded in the deed record book of the county where the real property affected is situated; or a declaration of interest may be cancelled by the judgment of a court of competent jurisdiction as a cloud upon title in every proper case.

SEC. 4. A declaration of interest as above provided for shall be indexed by the county auditor, in the name of the record owner of the real property as grantor, and of the declarant as grantee; and a cancellation of a declaration of interest shall be indexed in the name of the claimant as grantor and the record owner of the real property as grantee.

SEC. 5. In so far as this act affects married persons having already acquired, and now holding the record legal title to community real property, in the name of either, a period of six months from the date of passage of this act is hereby allowed to the spouse not having the record title to comply with the provisions of section 2 hereof and, during said period of six months, neither spouse shall have the power to sell, convey or mortgage community real property without the other spouse joining in such instrument of conveyance.

Sec. 6. Chapter CLI of the Acts of the Legislature of the State of Washington, approved March 9, 1891, and entitled, "An Act to protect innocent purchasers of community real property," is hereby repealed.

ACT THREE.

An Act relating to the separate property of the husband and granting the wife an inchoate interest therein, and limiting the power of the husband to dispose of the same by will.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. If any person shall die testate and in his last will and testament shall fail to devise and bequeath to his wife, him surviving, at least one-third of his separate property and estate, real and personal, or the equivalent thereof, out of said separate property, and estate, such testator so far as such wife, him surviving,

is concerned, shall be deemed to die intestate: and such wife him surviving, shall be entitled to such proportion of the separate estate of said testator, real and personal, as if he had died intestate, and the same shall be distributed and assigned to her, and all other heirs, devisees and legatees shall refund their proportional part.

Sec. 2. The Superior Court sitting in probate shall have power to determine all questions arising under the provisions of this act, and make distribution and division in accordance herewith.

MR. PRESIDENT—Gentlemen, we will first consider Act One. What is your pleasure, gentlemen?

MR. KELLOGG—I move that the consideration of Act One with reference to community property be indefinitely postponed.

The motion received a second.

MR. PRESIDENT—Are you ready for the question?

MR. SECRETARY—I think that, since that committee has given this matter so much consideration and worked so hard on it, out of courtesy to the committee that you ought to put it on the table rather than indefinitely postpone it.

MR. KELLOGG—I will amend my motion, with the consent of my second. Second consents.

MR. SECRETARY—What I am getting at is this, to lay it on the table so that we may later continue consideration of it.

MR. PRESIDENT—I think I owe it to Mr. Post to read his telegram to me: "Am unable to attend meeting. Hope Association will adopt report of Community Property Committee, which would make our statute practically the same as California." Gentlemen, you have heard the motion. All those in favor will say Aye; those opposed, No. Motion carried.

Now, we have under consideration Act Two, Section 1.

MR. JONES—I move that section be laid upon the table.

The motion received a second, was put and carried.

MR. PRESIDENT—Section 2, of Act Two.

JUDGE CROW—Mr. President, since Section 1 has gone, I make the same motion as to the remaining part of the bill.

The motion received a second, was put and carried.

MR. PRESIDENT—Act Three.

MR. FAUSSETT—I have not had time to read Act Three, but if it is like Acts One and Two, I move it also be laid upon the table.

MR. BRUCE—Mr. President, I move that Act Three, with the resolution of the committee, be concurred in.

The motion received a second.

MR. CONDON—Mr. President, I second Mr. Faussett's motion that the Act be laid upon the table.

MR. PRESIDENT—Gentlemen, it is moved and seconded that Act Three be laid upon the table. Those in favor will say Aye; opposed, No. The motion is carried.

A short recess was here taken.

MR. PRESIDENT—The house will come to order. Owing to some matters that have not been fully determined yet, the Chair will postpone, with the permission of the Association, the consideration of the Report of the Grievance Committee until tomorrow, and this will complete the program of the day.

I notice on the program, as you probably all have, that there is to be a smoker for the members of the Association given by the Whatcom County Bar, at eight o'clock this evening, at which all members are desired to be present.

MR. BRONSON—I move that we proceed with the program as printed for this afternoon.

The motion received a second.

MR. PRESIDENT—The Chair does not wish to assume the responsibility of passing over this order of business until tomorrow and will explain. The Grievance Committee has reported to the Executive Committee. There has been no time or opportunity when the presence of a large portion or sufficient members of the Executive Committee could be had to call a meeting. It was designed to call that this evening and to consider the Report of the Grievance Committee, which has been handed in to the Executive Committee. For that reason

there is no report as yet before the Association which could be considered.

MR. BRONSON—With the consent of my second, I will withdraw the motion.

MR. PRESIDENT—And the Chair thought it was unnecessary to go to the trouble of making the statement, but, as members have not understood, and, recognizing the fact that it is not the right of the Chair to arbitrarily pass over an order of business, he makes this statement.

At the request of Mr. Grosscup, the members of the Committee on Admission to the Bar are asked to meet here immediately after adjournment this afternoon.

Adjournment was here taken until ten o'clock tomorrow morning.

FRIDAY, JULY 29—10 o'clock a. m.

MR. PRESIDENT—Gentlemen, the Association will please come to order. The first matter, gentlemen, on our order of business this morning is the Report of the Grievance Committee, Mr. John C. Higgins, Chairman.

MR. HIGGINS—Mr. President, the order of business seems to contemplate a report from the Grievance Committee to the Association, but the by-laws require that the Report of the Grievance Committee be made to the Executive Committee, and I will say to the Association that the Report of the Grievance Committee is now in the hands of the Executive Committee for action.

MR. PRESIDENT—What is the pleasure of the Association?

MR. GAY—Under the statement of Mr. Higgins, I do not see why we could not change it and have the Report of the Executive Committee just as well.

GENERAL BELL—We have a report, which is, that this report has now been placed in the hands of the Executive Com-

mittee. It seems to me that this Association has nothing further to do with the matter until the Executive Committee acts and reports to the Association.

MR. PRESIDENT—The Chair will so rule.

MR. HOWARD—Mr. President, before you proceed to the regular order of business the Membership Committee desires to report a supplemental list to the list submitted yesterday. The total membership secured at this meeting is now seventy-four, and I am pleased to say that of the number twenty-seven are from Bellingham, which I think gives it the highest pro rata membership of any local bar in this organization.

(The names of the new additional members are included in the report on page 33 *ante*.)

MR. EASTERDAY—In order that we may take this up in a consecutive manner, I ask unanimous consent that the Report of the Executive Committee be now heard.

MR. PRESIDENT—The Chair will state that the Executive Committee has the matter under consideration and has not yet been able to prepare a report.

The next matter is the Report of the Committee on Amendment of Law.

MR. SECRETARY—Mr. President, this is a report that was passed over yesterday, the report not having been received by the Secretary.

(The report is read by the Secretary.)

REPORT OF COMMITTEE ON AMENDMENT OF LAW.

Seattle, Washington, July 27, 1910.

Mr. President, and Gentlmen of the State Bar Association:

The Committee on Amendment of Law reports as follows:

I.

No amendments to existing laws have been agreed upon by your committee.

II.

Mr. S. M. Bruce, of Bellingham, has suggested that verifications of pleadings be abolished, for the reason that the verification has

become a mere matter of form, and being a matter of form has a tendency to lessen the sanctity of oaths.

III.

Mr. R. G. Hudson, of Tacoma, suggests that a law be enacted providing a punishment for persons not authorized to practice law, engaging in the practice of law.

IV.

The chairman of the committee suggests:

(1) That a law be enacted creating a commission, and providing for the appointment of commissioners, to prepare a criminal code, in order that the numerous statutes now upon the statue book which are never enforced, and which no one ever expects to be enforced, and those which are plainly unconstitutional, should be specifically repealed, and numerous statutes relating to crimes be made harmonious. Statutes now exist in this state which make acts, perfectly harmless in themselves, violations of law, and no attempt will ever be made to enforce such statutes until some individual has a grievance against another. The enactment of such statutes does much more harm, by bringing the law into disrepute, than does the doing of the act which is forbidden.

(2) A revenue law should be enacted so that the constitutional mandate would be complied with, which requires that

"The legislature shall provide by law a uniform and equal rate of assessment and taxation of all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property.

"The legislature shall provide, by general law, for the assessing and levying of taxes on corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property."

(See Constitution, Art. VII, Secs, 2, 3.)

(3) The code of civil procedure should be amended so that written notice of appeal filed with the clerk of the Superior Court at any time within five days after the entry of a judgment or decree should be as effectual as the giving of oral notice of appeal in open court at the time of the rendition of the judgment or decree. The reason for desiring such an act is, that in condemnation cases and in equity suits, where the parties are very numerous, unless the attorney for a party happens to be present in court when the decree

or judgment is rendered, so that he can give oral notice of appeal, he is compelled to serve written notice of appeal upon all parties who have appeared in the cause (except in certain special cases). There are times when it is almost impossible to effect such service, or, if possible, the expense involved is great. In an equity case exceptions to findings of fact and conclusions of law may be filed at any time within five days after the court has made findings of fact and conclusions of law. No greater hardship is imposed upon the successful party by his being compelled to take notice of the filing of a written notice of appeal within five days after the entry of a judgment or decree, than is imposed upon him by his being obliged to take notice of the filing of exceptions to the findings of fact and conclusions of law. Such an act, however, should not do away with the existing methods of taking an appeal, but should be an additional method to those now existing.

(4) A law should be enacted providing that appeal and supersedeas bonds should run to the State of Washington, and should inure to the benefit of all parties to the cause having any interest in sustaining the judgment or decree appealed from.

The foregoing suggestions are those of the individual members of the committee, and not of the committee.

Respectfully Submitted,

JAMES B. HOWE, *Chairman.*

MR. SECRETARY—I beg pardon for not asking Mr. Bruce to read this. I had forgotten that he was a member of that committee until I saw his name down here. In order to bring this before the Association, I move that this matter be referred to the new Committee on Amendment of Law.

The motion received a second, was put and carried.

MR. PRESIDENT—We now have the Report of the Special Committee on Legal Education and Admission to the Bar, which the Secretary will read.

(The report is read by the Secretary.)

To the State Bar Association:

Your committee to whom was referred the report of the Standing Committee on legal education and admission to the bar respectfully recommends:

That the Legislature should amend Chapter 139 of the Laws of 1909 so as to provide:

First: "Students shall be registered at the beginning of their course of preparation for admission to the bar, such registration to be filed with the Clerk of the Supreme Court and to contain a sufficient showing that the student has passed the required academic examination. A candidate removing from a jurisdiction having reasonably similar standards for registration may have the registration in such other jurisdiction transferred."

"Registration may be permitted by the Supreme Court when the candidate satisfies the Court on motion that he had the requisite education at tne date as of which he desires to be registered and in any case where the showing is deemed sufficient as to his qualifications and there has been no laches on his part."

Second: That it is recommended to the Legislature that the period of preparation under Chapter 139 of the Laws of 1909 be extended to three years.

Third: That it is recommended to the Supreme Court of this State that it adopt rules requiring the examining committees for admission to the bar to examine all applicants thoroughly as to their familiarity with the practice, procedure and laws of the State of Washington.

And further providing that no rejected applicant for examination to the bar be allowed to present himself for examination until the expiration of six months after any former rejection.

And further that a rule or law be adopted providing that after any bar examination all questions asked and answers submitted shall be open to the public.

That this association requests and empowers dean John T. Condon to act in furtherance of these resolutions.

B. S. GROSSCUP,
J. B. BRIDGES,
W. P. BELL,
JOHN T. CONDON,
RICHARD SAXE JONES,
JAMES M. GEPHART.

MR. PRESIDENT—Gentlemen, what is your pleasure?

MR. BATES—I move the adoption of the report.

The motion received a second, was put and carried.

MR. PRESIDENT—We next have the Report of the Committee on Methods of Selecting Judiciary, Mr. Arthur Remington, Chairman.

MR. REMINGTON—Mr. President and gentlemen: It seems to me that perhaps the program as published intended a more comprehensive report than I have prepared. I suppose I ought to say that this report is merely a reflection of my own personal views, as I have been unable to get in touch with the balance of the committee, but they have had a copy of the report I have prepared, and I will file it with the Secretary of the Association.

REPORT OF COMMITTEE ON METHOD OF SELECTING THE JUDICIARY

To the Washington State Bar Association:

Gentlemen: Your committee to examine the method of selecting the judiciary in other states, reports as follows:

The judges of the highest court of appeals are appointed or nominated by the governor with the consent or approval of one or both branches of the legislature in Connecticut, Delaware, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, and New Jersey. In Rhode Island, South Carolina, Vermont, and Virginia they are chosen by the legislature. In all other states they are elected by popular vote of the people. The method of selecting judges of the lower courts corresponds, with some few exceptions, and perhaps a few changes in minor details.

It is thus at once seen that there is practically only one generally recognized method of selecting the judiciary in the American states—and that is by a popular vote of the people. All the constitutional changes of recent years have been in this direction, and the cry of the day, more than ever before, is for a more representative form of popular government. It is idle to say to the American people that the elective franchise should not include the judiciary. There is no way to meet their argument that the three separate branches of our government should be distinct and independent of each other, and that the judiciary, which ultimately acts in restraint of or supervision over both the executive and legislative branches, should not be dependent upon either of the other branches for its existence or freedom of action. However advisable it may be to delegate the selection of the judiciary to one or both of the other branches of the government, it is not to be expected that the Ameri-

can people will ever relinquish their right to a judiciary of their own direct choice. For this Association to suggest, especially at this time, any curtailment of the elective franchise, would simply invite popular distrust and merited criticism.

This leaves for consideration only the methods of electing the judiciary by popular vote, and there seems to be practically no divergence in methods except in the matter of nominating candidates. The prevailing practice seems to be about equally divided between the convention plan and the direct primary election. In most of the states there are optional provisions, making it possible to nominate by convention, by primary election, or by petition, so that we often find candidates in one field nominated in all the various ways. In some states the convention plan or the direct primary is made exclusive. Having made an inquiry into the methods usually employed at the present time in all the elective states (whether optional or not) we find that the judges of the highest courts are nominated in conventions of political parties in Alabama, Colorado, Indiana, Iowa, Kentucky, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania Tennessee, Utah, Washington and Wyoming.

In the following states they are nominated by direct primary elections: Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas and Virginia.

In West Virginia candidates are nominated by convention or primary election at the discretion of the political parties, but we are not advised as to the prevailing practice. In Wisconsin, an optional state, they are usually nominated by nomination papers signed by members of the bar and others. In Montana, all judicial officers are nominated only by petition, signed by a certain per cent. of the electors.

In New York the judges of all state courts are elected by popular vote. The state is divided into nine judicial districts and also four judicial departments. In each department there is an appellate division of the supreme court. This consists of seven judges in the city of New York, which constitutes the first department, and five judges in each of the other departments. These judges of the appellate division are appointed by the governor from the judges of the supreme court, but in the first instance they are elected by the people. Party nominations for supreme court justices are made by party conventions in each judicial district where there is a judge to be elected. The members of the nominating convention are selected at the primaries and nominations for judges of the court of appeals are made at the state conventions of the respective parties. Independent nominations for any judgeship may be made by petition.

Of late years there has been very little political contest over the judges of the court of appeals, and frequently the same man is nominated by both parties.

In Tennessee, it seems that heretofore the judges of the supreme court have been nominated by a convention separate from political officers, and this year, when the governor attempted to force them into a political primary, the majority of the judges appealed directly to the people at the election to be held on August 4. It cannot be denied that optional features have important corrective tendencies, and are in furtherance of personal liberty.

The direct primary, which has lately been supplanting the convention plan of nominating candidates, is yet unproved and is now before the bar of public opinion. The respective merits of these two principal systems can only be determined by time and experience.

Many of the states have but recently taken up the primary system, among other, Illinois, where the direct primary has not yet been tried. On the other hand, Alabama has just given up primary elections, and provided for a judicial convention. The eyes of the whole country have been but recently turned to New York, where the direct primary railed to pass, although shorn of many of the evils of the Oregon system, and backed by Governor Hughes and Roosevelt. At present, attention is directed to Oregon, where a determined effort is being made to overthrow the whole system by means of endorsements by party conventions.

In a few states, distinctions are made between the highest and the lower courts. Iowa, a direct primary state, Michigan and Pennsylvania, and perhaps other states, have the present Washington system, in which the judges of the highest courts are nominated by the state convention, while judges of the court of common pleas in Pennsylvania, and of the circuit courts of Iowa and Michigan are nominated by a primary election, as in the case of our superior courts.

There is, therefore, one conclusion that is beyond all question. With the scales so evenly balanced, the public mind so undecided, and the opinions of the ablest statesmen so conflicting, it is not for any one to criticise our last legislature in its adoption, in part, of both of these systems, following as it did the practice in at least three of the older states.

The tenure of office, which certainly has its bearing on the method of selection, varies in the different states from two-year terms, to life, or during good behavior. Six years is the most com-

mon period. The following affords a comparison between the highest courts of appeal in the various states:

For two years: Vermont.

For four years: Nevada.

For six years: Alabama, Georgia, Indiana, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington.

For seven years: Maine, New Jersey.

For eight years: Arkansas, Connecticut, Kentucky, Michigan, North Carolina, South Carolina, Tennessee, Wyoming.

For nine years: Illinois, Mississippi.

For ten years: Colorado, Wisconsin.

For twelve years: Delaware, California, West Virginia.

For fourteen years: New York.

For fifteen years: Maryland.

For twenty-one years: Pennsylvania.

Until seventy years of age: New Hampshire.

For life or during good behavior: Massachusetts and Rhode Island.

The utility of an extended comparison of the details of the various direct primary and convention systems, now in vogue in the different states, as applied to the judiciary, is entirely out of all proportion to the time and labor that such a study would involve. Besides, in the end, the condition and temper of the people in each locality must be the controlling guide, and each community must determine for itself what system is best suited to its own environment. Imagine, for instance, the application in some of the Western states, of the Vermont method. There the judges are elected by the legislature for a term of two years; yet the chief justice has served for twenty-nine years, and his associates for periods of like duration, a re-election being a mere matter of form.

The advantages and disadvantages of the direct primary are as applicable to the judiciary as to the other branches of the government, and involve a discussion entirely beyond the province of this committee. We therefore recommend that this committee be permanently discharged.

No attempt has been made to study or compare the details of the various systems. Those who care to pursue the subject may consult the following:

Alabama: Const., 1901, secs. 139 et seq.; vol. 3, Code 1907, p. 105 et seq., secs. 5948 et seq.; vol. 2, Code 1907, p. 1049 et seq.; vol. 2, Code 1907, p. 1409, secs. 3042, 3051, and secs. 3229 et seq.

Arkansas: Const. 1874, art. 7; Kirby's Digest, ch. 41.

California: Const., art. 2, sec. 2½; art. 6, secs. 3, 4, 6; Laws 1909, p. 691, ch. 405.

Colorado: Const., art. 6, secs. 6, 7.

Connecticut: Const., art. 5; Amendments, art. 12, 26, 30.

Delaware: Const., art. 4, sec. 3.

Florida: Const., art. 5, sec. 2; Gen. St. of 1906, title 4.

Georgia: Const., 1877, art. 6, secs. 2, 3, 12; Civil Code, secs. 5839, 5840, 5863; amended by Act of 1897, p. 16.

Idaho: Const., art. 4, secs. 6, 7, 8, 9, 10; Rev. Codes, secs. 3814, 3823.

Illinois: Const., 1870, art. 6, sec. 2 et seq.; Hurd's Statutes of 1909, p. 64; Special Session 1909-10; also Chapter 37 on "Courts."

Indiana: Const., art. 7, sec. 2; Burn's Statutes 1908, sec. 162, 1382.

Iowa: Const., art. 5, secs. 2, 11; Sup. Code of 1907, secs. 1087a1, 1087a27.

Kansas: Const., art. 3, sec. 2.

Kentucky: Const. secs. 112, 118.

Louisiana: Const., art. 82.

Maine: Const., art. 4, sec. 8; art. 6, sec. 4.

Maryland: Const., art. 4, sec. 14.

Massachusetts: Const., ch. 2, sec. 1; art. 9, ch. 3.

Michigan: Const. 1909, art. 7; Pub. Acts 1903, p. 44.

Minnesota: Const., art. 6; Revised Laws 1905, ch. 5, secs. 69-152; Revised Laws Supplement 1909, ch. 5.

Mississippi: Const., 1890, secs. 145, 149, 153.

Missouri: Const., art. 6; Revised Statutes 1899, ch. 14; art. 1, 2, 3, 4 and 5.

Montana: Const., art. 8, secs. 6, 7, 8; also art. 8, sec. 12; Laws 1909, p. 160; Political Code, sec. 524.

Nebraska: Const., art. 6, as amended in 1907.

Nevada: Const., art. 6, sec. 3; Laws 1909, p. 273.

New Hampshire: Bill or Rights, art. 35; Const., art. 45, 72-80.

New Jersey: Const., as amended 1874, art. 6, P. L. 1900, pp. 343, 349, 332; P. L. 1898, p. 556; P. L. 1908, pp. 290, 293.

New York: Const., art. 6; Laws 1909, ch. 35, 22.

North Carolina: Const., art. 4, sec. 21; Pell's Rev. Laws 1908, Elections.

North Dakota: Const., sec. 90, and amendment of November 8, 1908; Laws of 1907, p. 458.

Ohio: Rev. Stats., sec. 140; General Code, sec. 1466.

Oklahoma: Const., art. 3, sec. 4; art. 7, sec. 3.

Oregon: Laws 1905, pp. 7-40. See Compiled Election Laws.
Pennsylvania: Const., 1874, and Laws 1895.
Rhode Island: Const., art. 10, and art. 12 of amendments.
South Carolina: Const., art. 5, of 1895.
South Dakota: Const., art. 5; Laws 1909, ch. 109.
Tennessee: Const., art. 6, secs. 2, 3; Shannon's Code, secs. 1150-1151 et seq.
Texas: Const., art. 5, sec. 2; Primary Election Act of April 1, 1903, as amended; Laws 1907, p. 328; Laws 1909, p. 451.
Utah: Const., art. 8; Compiled Laws 1907, sec. 822.
Vermont: Const., art. 2, sec. 2.
Virginia: Const., 1902, secs. 91, 96.
Washington: Const., art. 4, secs. 3, 5; Rem. & Bal. Code, secs. 4807, 4842.
West Virginia: Const., art. 8, secs. 1-9, 10-15.
Wisconsin: Const., art. 7, and amendments; Statutes, ch. 112, 113, 114.
Wyoming: Const., art. 5, sec. 4; Compiled Laws 1910, sec. 2121.

Respectfully submitted,

ARTHUR REMINGTON, *Chairman.*
SEABURY MERRIT,
AUSTIN MIRES,
FRANK REEVES,
WILL H. FOUTS,

MR. PRESIDENT—Gentlemen, what will you do with the report?

The report was, upon motion, adopted.

MR. PRESIDENT—The several members of the Committee on Nominations being absent, the Chair will appoint as members of that committee, to report at 1:30 o'clock this afternoon, Mr. Neal, Mr. Edge, Judge Albertson, Judge Joiner and Mr. Dovell.

The next matter of business is the Report of the Legislative Committee, Mr. P. C. Sullivan, Chairman.

MR. SULLIVAN—Mr. President, as far as the Legislative Committee is concerned, the Committee on Constitution and By-Laws finds nothing for it to do unless questions have been referred to it by the Association, and the Secretary notified

me that there was nothing for it to do that he knew of, and therefore no report has been made.

MR. PRESIDENT—We will now have an address from Honorable George A. Lee, of Spokane, on "Some Reasons for Failure of Municipal Government in the United States."

MR. LEE—Mr. President and Gentlemen of the State Bar Association:

(Note by Secretary. Mr. Lee's address is not published, as at his request, the manuscript was returned to him to be loaned to some one interested in that subject and became lost.)

MR. GAY—I note that we have apparently passed one paper, but I have been reflecting upon the paper of Mr. Remington, and I want to call the attention of the Association to something respecting Mr. Remington's paper. So far as it is a review of methods and so far as the methods which are suggested in selecting judiciary, it was very proper, probably, without any discussion, to have adopted it, but if it means that this Association is going on record as endorsing the laws of this state as they now stand respecting the election of the judiciary, it seems to me that it has got enough to appeal to the interest of the bar that they ought to reflect upon it a little before they hastily adopt such a paper. The method by which the Supreme Court Judges are to be nominated for their election this fall, as it is being carried into effect, does not seem to me to appeal to the lawyers of the state. Now, the manner in which delegates are being selected has a tendency, I am very, very certain, to bring the bench of the highest tribunal into some disrepute and to be subject to criticism. People either want a voice in it in some way or some manner. If the law was amended so that it provided that there should be a delegate convention, that delegates to that conventon should be selected in a manner in which the people of a party would get together in selecting them, the old method that was in vogue before we had the direct primary at all,

there would be some excuse for it, but in the manner in which it is done, by chairmen of committees and central committees naming delegates, picked up as they are, gentlemen, it is going to lead us into disrepute. You may talk about it and think about it as you please, but it is bad morals to be passing over so hastily that which seems to recommend and endorse that sort of method. Now, regarding the election of Superior Court Judges, I will talk upon that subject absolutely from an impartial standpoint. It is unnecessary to say that, because, no matter what personal interest I have in it, the point is of a nature that I know appeals to you.

MR. CONDON—Judge Gay, if you will pardon me a moment. I think perhaps Judge Gay has an idea that is right. I move a reconsideration of the motion upon which the paper was adopted.

The motion was seconded and carried.

MR. PRESIDENT—The matter now seems to be before the house upon the motion to adopt the Report of the Committee, and the discussion will be had upon that subject, and I will recognize you, Judge Gay.

MR. GAY—Very well, then. My remarks were about concluded, but I came to the election of the Judges of the Superior Court. The legislature last winter saw fit to amend the law that was adopted by the previous legislature and they have fixed it now so that every lawyer who chooses, and that is probably right, can nominate himself, primarily, for the office of Judge of the Superior Court, and then they all go before the primary. We know in this state that it is apparently becoming more and more so every election, and I didn't see any hesitating about doing it in the very inception, that everybody is voting in the primary of the dominant party, and so, therefore, the Judges of the Superior Court bench have to stand that one onslaught on them and they had to stand that one campaign, if they were to campaign at all. Now, instead of

letting those who received the highest number of votes become elected at the primary, as it was before, the legislature has provided that, if they have two judges to be elected, that the names of the four having the highest number of votes shall be upon the ticket in November. If you have seven, as we have in King county, then fourteen, if there were fourteen who had been candidates, their names shall be upon the ticket, so that in November those who receive the highest number of votes shall be the elected Judges of the Superior Court, making practically two campaigns, making practically an onslaught upon the court, constantly upon the Judges, keeping them in that sort of condition for a period of about four or five or six months. I do not think it is good for the courts, I do not think it is good for the public and I do not think that that law ought to have been enacted in that manner. Personally, I am in favor of a non-partisan judiciary and I believe that the people should have a voice in it. I will say to you, gentlemen, that, personally, if I could write the constitution, I would let a man be elected first by the vote of the people for a period of four or six years, then, if he found he liked the work and it met the approval of his own manhood and his own conscience, and the people having a chance to observe him, let him then become a candidate again, and, if the majority support him, that he hold the office for life. That would be the way I would like to write the constitution, if I could. But that is not our constitution. In the County of King we have already got two men against the two that have to be re-elected that are pacing the streets and putting in the time in campaigning after the office. They will keep it up until November because there will undoubtedly be four candidates upon the ticket, and it seems to me that this matter ought to be enough discussed that that part of the paper that apparently endorsed that ought to be eliminated, and I am opposed to that portion of the paper that endorses the present law.

JUDGE CHADWICK—Mr. President, it may be that we have misunderstood the report of Mr. Remington, but if I understood him correctly, he undertook only to say to this Association what the condition was with reference to selecting the judiciary in other states and limited all opinions to himself. If I remember correctly, he said that he undertook to express only his own opinion, not having had the co-operation of the other members of the committee, and it seems to me, if I understood the report correctly, that a motion to receive and place the report on file as the opinion of Mr. Remington is all that is necessary at this time. It is apparent that a discussion of this matter would result in nothing more than the expression of the individual opinion of the speaker and would not be settled at this time by anyone. I therefore move that the motion to adopt be amended and that it be stated in this way, that the report be received and placed on file.

The motion received a second.

MR. PRESIDENT—It is moved and seconded that, for the motion to adopt the report of the committee, there be substituted the motion to receive the report and place it on file.

MR. CONDON—Mr. President, I am with Judge Chadwick's suggestion. At the conclusion of the paper, Mr. Remington said he had not drawn any conclusion at all. He left it so that if anyone wanted to draw a conclusion they were at liberty to do so, therefore I think this suggestion should prevail.

MR. RUMMENS—Mr. President, I believe the gentleman only stated that the legislature of the State of Washington was not open to criticism for what they did do. I think that is correct. I do not think we endorse exactly what they did, but I do not think they are open to public censure, and that is as far as it went, and that is why I seconded the motion.

MR. DORR—Mr. President, it does seem to me that this is an opportune time and that the members of this Association ought to improve their opportunity to express themselves in some way

upon some theory or some plan for the selection of the judiciary. With the report merely received—a non-committal report—it means absolutely nothing except as of historical value and it still leaves the question as much in the air as it was before the report was read. I am in favor of receiving the report and placing it upon file, but, in order to bring the question that I think is underlying this whole discussion before the members of the Bar Association, I will offer an amendment to the motion that Judge Chadwick made: Be it resolved that it is the sense of this Association that the judiciary of this state should be elected by a direct vote of the people at one election.

The amendment did not receive a second.

MR. PRESIDENT—The question is now on the substitute. Are you ready for the question. The substitute motion is to place the report on file. All those in favor of the motion say Aye; opposed, No. The motion is carried.

MR. GAY—Now, Mr. President, I second the motion made by Mr. Dorr.

MR. PRESIDENT—I think the Chair will have to rule that out of order.

MR. NETERER—Mr. President, I move you that this Association deprecates the action of the legislature in taking the selection of Supreme Court Judges out of the direct primary law until the law had been given a fair test, thus placing the selection of our highest judicial tribunal into partisan politics.

MR. CONDON—Mr. President, I make a point of order that that is out of the order of business, and I think there will be an opportunity, under the head of new business, where this matter will be taken care of. I am personally in sympathy with the motion, but I do not think this is the proper time to submit it.

MR. NETERER—Upon the suggestion, I will withdraw the motion at this time, and I will say that I will offer an appropriate resolution at the proper time.

MR. PRESIDENT—We will next have the Report of the Committee on Rules of Appellate Procedure, Mr. Powell, Chairman.

REPORT OF COMMITTEE ON APPELLATE PROCEDURE.

To the President and Members of the Washington State Bar Association:

Your Committee on Rules of Appellate Procedure beg leave to report that in the opinion of the committee the practice on appeals has now become well settled through the judicial interpretation of the present rules and statutes governing the same, and that no changes in such rules should be recommended.

JOHN H. POWELL, *Chairman.*

Upon motion, the report of the committee was adopted.

MR. PRESIDENT—Gentlemen, that closes the order of business for the morning.

MR. NETERER—Mr. President, may I ask when and where the order of new business will be taken up?

MR. PRESIDENT—We have no such order. We have unfinished business this evening.

MR. NETERER—Mr. President, I desire to renew the motion I made a moment ago, and move that it be made a special order for 1:30 o'clock this afternoon.

The motion received a second.

MR. PRESIDENT—I understand your motion is that the Association disapproves of the action of the legislature in amending the primary law so as to read as it does at present?

MR. NETERER—And to petition the legislature to re-enact the law as it originally stood.

MR. PRESIDENT—Do I understand the second to be in line with the motion as explained?

MR. CONDON—I desire to second it, because I seem to have done an injustice to the gentleman in my point of order a while ago.

MR. EDGE—Mr. President, I would call the Chair's attention to the fact that the order of business may be changed at any

time by a majority vote, and the majority vote has already indicated a change in that respect.

MR. SECRETARY—Mr. President, I hope this matter will go over until after the adress by Mr. Dorr?

MR. WALKER—I hope this motion will prevail, for this reason: I believe that this is one of the questions that is of vital interest to the bar of this state, and that it should be given precedence in the business of the afternoon and not put at a time when we are about to adjourn and go upon the ride for the purpose of viewing the city. I hope that the motion will prevail so that this matter may be given a full and free discussion at a time when we are not hurried.

MR. SECRETARY—Mr. President, I only want to say this, it has been the custom always to find place for unfinished business at the close of the afternoon of the last day, and this address of Mr. Dorr comes on in the program early. In fact, there is nothing before that except the Report of the Committee on Nominations and that Committee has not met yet and probably that will all go over.

The motion before the house was put and carried.

MR. PRESIDENT—The motion is carried, and the resolution offered by the gentleman will be the special order of business for 1:30 o'clock this afternoon, and the Chair would suggest that the motion be put in the form of a written resolution.

MR. NETERER—I will do that, Mr. President.

After announcements, adjournment was taken until 1:30 o'clock, P. M.

FRIDAY AFTERNOON, 1:30 o'clock, P. M.

MR. PRESIDENT—Gentlemen, will you please come to order.

MR. NETERER—Mr. President, I notice there is a fixed program here and that it contains an address on State and Federal Control of Waters, including Fisheries, by Senator Dorr, and

many members of the Association have expressed a desire to hear Senator Dorr before the special order is taken up. I would request, therefore, with the consent of the Association, that the special order be taken up after the address of Senator Dorr.

MR. PRESIDENT—The consent is given. We will now listen to Honorable C. W. Dorr on the subject of State and Federal Control of Waters, including Fisheries. (See appendix.)

MR. NETERER—Mr. President, I desire to introduce the following resolution in lieu of the resolution offered this morning:

"Resolved that we recommend that the next legislature enact such legislation as will restore the nomination of Judges of the Supreme Court to the provisions of the direct primary law and maintain a nonpartisan judiciary."

I move the adoption of this resolution.

The motion received a second.

MR. DORR—I desire to offer a substitute, and will pass it up to the Secretary to read it.

Read by the Secretary, as follows:

"We favor an absolutely nonpartisan judiciary and, to that end, recommend that the statutes be so amended as to provide for the nomination of all Judges by judicial conventions, composed of delegates elected by the whole people for that purpose only, and that no other business shall be transacted by such convention than to nominate Judges, the Judges so nominated to be elected at the general elections."

MR. GROSSCUP I move the adoption of the substitute.

The motion received a second.

MR. NETERER—I am not going to make any extended remarks upon the resolution I offered. I think you all know as much about the subject matter as I do myself. The legislature stood for declaring a fixed policy for the election of state officers and likewise the judicial officers, and until that policy is changed, I think that a certain exception should not be made

of the Judges of the Supreme Court. It places the Judges of the Supreme Court in the wrong light; it places the judiciary of the state in a false position. The judiciary is the bulwark of our homes, liberties and civil rights, and whenever there is a lack of confidence or anything that may enter in to intercept the confidence which the people are entitled to entertain in the judiciary it is not a wholesome condition, and I think you all agree with me that the sentiment among the laymen of the state upon the enactment of that law making an exception of the Supreme Court Judges was not such as it should have been. They felt as though there was something that they could not see and could not comprehend. They felt as though there was a mistrust placed somewhere and that mistrust was placed in the people, and, if the primary law is not the proper law, then take the entire list and roster of state officers from it and place them where they ought to be.

With relation to the substitute that was offered, I have the same objection to that, and it is covered by what I said a moment ago. It removes the nomination and voice in the selection from the people, where the fixed policy of the state had placed it, and, if it is not a good policy to follow as far as Judges of the Supreme Court are concerned, then it is not a good policy to follow for any state officers, and I say that, until the policy is changed absolutely as to all officers of the state, that the Judges of the Supreme Court, or any Judges, should not be made an exception. I would be heartily in favor of a separate election, entirely separate from the election of the officers of the state and county and that entirely non-partisan, but I am satisfied and believe that, in the adoption of the substitute which has just been offered, the same objection can be raised that can be raised to the law as it stands now. It places the judiciary of the state in the hands of a dozen persons for partisan preferment and to the detriment of the citizenship of our state. We are in the formative period. We

are destined, as I believe, to be the greatest state on the American continent. I do not think there is any question about it, and, in this formative period, we should enact such legislation and take such measures as will fix a foundation upon which a superstructure can be erected which will not afford an opportunity to some designing persons to engraft upon this young and growing state a system which will be destructive of our civil rights and of our liberty. I say to you, gentlemen, that I think, as the law stands now, that the resolution as originally offered should be adopted and the people of the state afforded an opportunity to make these nominations direct, as they do every other officer of the state.

MR. BRYAN—With reference to the substitute motion, which we are now considering, the great difficulty would be the very objection that was made in certain quarters to the electing of delegates by convention or by primaries. It was said that it was an expensive procedure and that there was no one to pay the expense of electing these delegates. Now, if we all work in our legislature the next time, and adopt a law that will require delegates to be elected, not by any party, a nonpartisan series of delegates, to go somewhere and name these Judges, then in every precinct and in every county the question of expense, the question of who is going to pay for the primary election at which these delegates will be chosen, will come up. The question of a skeleton organization of some kind, which the party now supplies, will come up. What kind of an organization is going to take it up and how are we going to get the expression of the people? and who is going to put up the money. All that will come. Perhaps we will have five Supreme Judges to elect; perhaps we will have two; perhaps we will have four; perhaps three, but howsoever many we may have the question will not be connected with any other state officers, it will not be connected with any county officers. Those scheming to elect delegates will have that one sole purpose, and our

people will be called upon, I suppose, to elect delegates to some kind of a nonpartisan county convention and then that county convention will elect delegates to a state convention and all that will be nonpartisan, but it does not seem to me that there is enough explanation of the method and minutiae by which such a system will be put into effect for this Association to go on record in that way. I believe that the whole question is an issue between the direct primary and the question of the delegate system of nominating officers. I believe both the parties have declared for the primary system, and if the direct primary system was changed in this particular without the request of either party, without any general request on the part of the people or any demand on the part of the people for a change, I believe the whole change was wrong and I believe we ought to go back to the system originally adopted or drop the primary law, for a system which is good enough to elect state officers by is good enough to elect Judges by. I believe while we are electing Governor, Lieutenant-Governor and all other state officers is the wisest and most opportune time for the people of our state to consider whom they want for their Judges of the Supreme Court. They are at the same time considering whom they want for Judges of the Superior Court, and the various county and state officers, and the various communities and centers of public information are well alive on the political questions of the day and the qualifications of candidates and they would be selected in the very best possible way at that time. I do not believe we ought to return the Judges or stand for returning the Judges to the delegate system of nomination, where delegates meet and elect delegates, and those delegates elect delegates to another state convention. Whatever discussion may be made on this point, let it be remembered that it is almost impossible, and most unwieldy for the State of Washington to hold a nonpartisan convention. Suppose we were going to hold it ninety days from now, a nonpartisan State con-

vention, to name Supreme Court Judges, who would name the committee, how would we get the delegates elected and who would pay the bills and by what system would it be managed?

MR. FAUSSETT—Mr. President, if I were privileged, I would file my same prayer that we do not return to the old system. God relieve us from a return to the delegate plan. Any of us who have had any experience in politics know what that means. There is in the public mind this thing, and I can speak truthfully and I know, that the people of this state are for the direct primary, the right to exercise it in its full measure. If we are to have a government of the people, the people must be given the right to have a voice in it. I have heard more than one voter in this section of the country ask: "Why were the Judges of the Supreme Court excepted in that primary law?" Everywhere, far and wide over this nation, as well as here, is the awakening of the public conscience, asking and demanding that the people be given a right and voice in the election of officers and the management of the Government. Now, whether this primary law is right or not, I think it is the concensus of opinion that it is better than the plan we had before, but, inasmuch as we have it for the nominating of most of the officers for county and state, I say let us have it for all of them, and not except one set of officers and apply it to the others. I should go away from here feeling almost ashamed to say that the great State Bar Association of the State of Washington would go back to the delegate system and put the nominating of the highest officers of this State, those who hold the bulwark of liberty in their hands in the interpretation of law—put it in the hands of purely partisan and party interests, if you please, and take it out of the hands of the masses of the people. Don't let us go back to the delegate system. Let us have our primary system and fight it out and, if it is wrong, get at it and make it right. Let the voters of the State of Washington have something to say in this great matter.

MR. QUINBY—With reference to the reason, the fact is the formation of the primary law was to nominate party candidates. At the same time the legislature said "We shall have a nonpartisan judiciary"—two things that are absolutely inconsistent. We all know that only a part of the voters attend the primary election and yet, under the old law the Judges of the Supreme Court and Superior Court—and it is true now of the Superior Court—are really elected at the primary elections, when the great mass of the voters do not take part at all. The trouble was in the formation of these two laws, in attempting to combine them in one you made a nonsensical law, or the legislature did, attempting to nominate party candidates and at the same time nominate a nonpartisan judiciary with the same machinery. I agree with the two speakers who have said that you cannot eliminate partisanship from the convention—from a body of delegates, however you may select them. I believe it is the concensus of those present that the only method by which you can have an absolutely nonpartisan judiciary is to have a separate election. Now, that does not mean an election at a separate time, but an election conducted under a separate method of nomination. It seems to me that you can combine both of those propositions by having your judiciary nominated about the time of the primary election by petition, both Supreme and Superior Courts, and then let your ballot used at the general election contain a non-partisan judiciary ticket with all the names of those who have been nominated for the judicial offices under a non-partisan heading. You have eliminated all politics; you have done away with partisanship in the nomination. If you please, have the petition a substantial one. If you have a Judge upon the bench that has the confidence of the bar, that bar will see that a substantial petition is formulated for him. If they are not satisfied with him they will see that someone else is nominated by petition that will satisfy the bar, and I believe to them, and to

them only, should we look for the selection of Judges who will be absolutely impartial.

MR. PRESIDENT: Gentlemen, the question is on the substitute motion of Mr. Dorr. All in favor of substituting the resolution of Mr. Dorr for the original motion say aye; all opposed, no. The motion is carried.

A VOICE: Let us have a standing vote, Mr. Chairman.

MR. PRESIDENT: Very well, we will have a standing vote, although the Chair is satisfied that the motion is carried.

MR. RUMMENS:—Before the motion is put I would like to make one suggestion on the substitute motion. I will be very brief. I am not in sympathy with the original resolution, nor am I with the substitute. My position is this, that the office of Supreme Judge is such that he practically makes a hermit out of himself. After he has been upon the bench two, three or four years he becomes so obscured that not ten per cent. of the people of the State can write out or tell you, within fifteen minutes, the names of the Judges of the Supreme Court of the State of Washington, and to say that the people of the State of Washington are in a position to intelligently vote at a direst primary upon who should be upon the Supreme bench is simply too preposterous. I believe that the Superior Court Judges, being local in character, are known to practically every voter of the county, and they can be selected at the direct primary, probably, but a Supreme Judge, not having the opportunity of acquiring a general acquaintance is in a different position. The very office which he occupies prohibits him from going about the state and making acquaintances, and therefore every voter of the state who votes for supreme judges votes in the dark or takes somebody else's cue for it. In other words, as some gentleman suggested, he took a lawyer's word for it, and if the lawyers of this state are to name the Supreme Court Judges through such agency, let the lawyers name them. I

say the only way we can intelligently nominate the Judges of the Supreme Court is to elect delegates who can get in touch with the situation. You have a whole mass of voters, mind you, and an unwieldy institution that can not reach them. But they should elect honest men devoid of politics as delegates. Those men in a convention convened for no other purpose except the selection of a Supreme Court, attempting to do it intelligently, realizing that they are to say who shall be nominated, will do it much better than your direct primary where the voters cannot even know whom they are voting for. But I am in favor of creating the nominees for the Supreme Court by convention and the others without.

MR. NETERER: Mr. President,—

MR. PRESIDENT: On the substitute, the Chair cannot recognize any more speakers.

MR. NETERER: I simply wanted to make this observation. While I would like to reply to some of the remarks of the distinguished gentleman, I would say that I measure the intelligence of the state by the intelligence of the people of this county. I am satisfied the people of this county are intelligent enough to vote upon the question.

MR. PRESIDENT: The Chair thinks this matter is not debatable at all. All in favor of substituting the latter resolution for the former one will rise; (53). All those opposed will rise; (36). The motion is carried and the latter resolution is substituted. Now, the matter before the house is the passage of the substitute.

MR. DORR: Mr. President, I move the adoption of the substituted resolution.

The motion received a second, was put and carried.

MR. PRESIDENT: The next matter in order is the Report of the Committee on Nominations, Mr. Neal, Chairman. The house will listen to the reading of the Report.

REPORT OF COMMITTEE ON NOMINATIONS.

We, your Committee on Nominations, do hereby report the following nominations:

For President, Hon. C. W. Howard, Bellingham.

For Secretary, C. Will Shaffer, Olympia.

For Treasurer, Arthur Remington, Olympia.

And your Committee does respectfully recommend, that the next meeting of the Association, be held at the City of Spokane.

FRED W. NEAL,
GEO. A. JOINER,
LESTER P. EDGE,
W. T. DOVELL,
R. B. ALBERTSON,
Committee.

MR. EDGE: I move the adoption of the Report.

The motion was seconded, put and carried.

MR. EDGE: Mr. President, under the rules, I understand it is necessary for a formal ballot to be taken, and I therefore move that the rules be suspended and that the Secretary cast the vote of the Association for the officers nominated for the several offices by the Committee.

The motion received a second, was put and carried.

MR. SECRETARY: I hereby cast the ballot of the Association for the gentlemen named in the Report of the Committee.

MR. PRESIDENT: Our next order of business should have been an address by Honorable W. B. Heyburn, United States Senator from Idaho, on "Conservation, the Unconstitutional, Illegal and Illogical Schemes of the So-called Conservationists." Unfortunately, Senator Heyburn is unable to be present. We received from him this morning the following telegram:

"On the eve of my starting for Bellingham on yesterday to attend the meeting of your State Bar Association, I was confronted with conditions over which I had no control which made it impossible for me to leave here without such serious loss and disadvantage to others as left me no choice but to stay here.

I regret exceedingly that I cannot attend your meeting. I wish you a very successful and pleasant occasion." Signed: W. B. Heyburn.

MR. PRESIDENT: Since our last meeting there have passed away a Chief Justice of the United States and two Associate Justices of the Supreme Court of the United States. It has been thought fitting that some tribute be offered to those men and, for that purpose, we will have short addresses by Judge Hanford, Judge Donworth and Mr. Grosscup. I hardly know if the gentlemen have arranged among themselves—

MR. CONDON: Judge Hanford has gone home.

MR. PRESIDENT: Judge Hanford has gone home, which we regret, but Judge Donworth is here. As Mr. Grosscup is to speak relative to the late Chief Justice, I will ask him to address you.

MR. GROSSCUP: Mr. President, gentlemen of the Association. (See Appendix.)

MR. PRESIDENT: Judge Donworth will now address us on the Associate Justices. (See Appendix.)

MR. PRESIDENT: Our next order of business is the Report of the Committee on Obituaries, Mr. John Arthur, Chairman.

REPORT OF COMMITTEE ON OBITUARIES.

Seattle, Wash., July 26, 1910.

HON. C. C. GOSE,

President of the Washington State Bar Association:
Bellingham, Wash.

Dear Sir: Your Committee on Obituaries respectfully reports that since our annual session last year eleven well-known members of the bar have passed to the other world. Mention will be made of these in the order of the date of death. (See Appendix.)

JUDGE KELLOGG: I move the adoption of the Report.

The motion received a second, was put and carried.

MR. BRUCE: Mr. President, I wish to state that I had received, from a Committee of One Hundred, of the City of Baltimore, Maryland, a communication requesting me to put before

this Association the subject of Senator Owen's bill pending before Congress for the establishment of, as a Department, a National Board of Health. Complying with the request of that committee, I ask that this subject be referred to the Committee on Federal Legislation. I make that as a motion.

The motion received a second, was put and carried.

MR. SECRETARY: The Committee on Nominations made no mention or nomination of delegates to the American Bar Association. The American Bar Association will meet this year at Chattanooga in the latter part of August. This Association is entitled to representation by three delegates, and I move that the President be authorized to appoint delegates to the American Bar Association.

Seconded, put and carried.

MR. SECRETARY: I have a communication here from the Comparative Law Bureau of the American Bar Association, which is as follows:

"Philadelphia, Pa., June 13, 1910. C. Will Shaffer, Esq., Sec'y Washington State Bar Association, Olympia, Wash. Dear Sir: It would give us great pleasure to have your State Bar Association join the other state organizations in becoming a member of this Bureau and send three delegates, as provided by the Regulations, to attend our Annual Meeting to be held on Monday, August 29, 1910, at 2:30 o'clock, P. M., at Chattanooga, Tenn., in conjunction with the Annual Meeting of the American Bar Association for which we are engaged in promoting the study of comparative law in this country.

The State bodies ought to assist in this work, which is becoming more important every year and in which there is great opportunity for every lawyer to discharge his obligation to the profession and benefit the country at large by adding to the efficiency of the bench, the bar and the legislative bodies.

The annual dues are $15 for State Bar Associations and a

letter requesting to be put upon our roll of members and naming your three delegates will be appreciated.

Yours truly,

Wm. M. Smithers."

I move that this be referred to the incoming Executive Committee.

Seconded and carried.

MR. SECRETARY: As stated in my report I herewith present an amendment to the by laws relating to a depository for the associations books received in exchange, etc., I desire to add before moving its adoption that coming at this time it will take unanimous consent to adopt this amendment. The amendment is as follows:

AMENDMENT TO BY-LAWS.

Article VIII.

With the consent of management thereof the State Law Library is hereby made the depository of all books records or other documents, relating to the science of jurisprudence, legal history or literature, belonging to the Association, or may be hereafter received by it, or any of its officers, as such, to become a part of and be used in said Library as other books and documents are used until the further order of this Association.

I move its adoption.

The motion was seconded and carried unamiously.

MR. CONDON: I desire, before the meeting concludes, to offer a vote of thanks to the Whatcom County Bar Association for the warmth of their welcome and the elegance and bountifulness of their entertainment, and also to the Bellingham Lodge of Elks for the use of their club and lodge rooms, and the Whatcom County Light & Railway Company for its entertainment and the car ride this afternoon.

The motion received a second and was carried unanimously by a rising vote.

MR. GREENE: Mr. President, before adjournment I wish to move that this Association endorses the sentiments expressed in Mr. Dorr's paper relative to State control of our fisheries.

Motion carried.

Final adjournment was here taken.

Saturday, July 30th.

Under the auspices of the Whatcom County Bar the Association was excellently entertained by a steamer ride and outing, an account of which is taken from the Bellingham Herald of Sunday, July 31, as follows:

"'I cannot remember of any excursion of the Washington State Bar Association in the last ten years that has been as enjoyable as this one,' declared Attorney C. C. Gose, retiring president of the association, while returning to this city last evening after the trip among the San Juan islands.

Wearing overcoats and heavy sweaters as a protection against the cold air of the midsummer day, 150 lawyers, departed on the steamer Waialeale for the San Juan islands as the guests of the Whatcom County Bar association, and everyone of them expressed his delight and enthusiasm over the many beautiful things they had seen in words similar to those of the retiring president. The air was cold in the morning but before the noon hour the sun had crept from back of the clouds and the warm rays shone on the waters of the Sound and made the day one of the most pleasant imaginable.

The boat left Bellingham about 9:15 o'clock and crawled its way around the southern extremity of Lummi island and up along the shore to the Village Point fish trap, owned by the Carlisle Packing company. The boat was tied to the trap and the fishermen began brailing the thousands of shining, curling sockeye salmon into the scow. Approximately 8,000 of the red salmon were taken from the trap in the few minutes that the visitors were there. The rap lift was one of the most successful from a spectacular view that could be desired. Nearly all of the visiting attorneys had never witnessed the operations before and were astonished at the sight. Frank Wright, manager of the cannery, was there and did everything possible to entertain the visitors.

From the fish trap the excursion boat crossed the straits to Orcas island and entered Doe Bay, where the citizens of that place were all prepared for a most wonderful feast of baked clams and salmon and many incidentals. The banquet was served in the old Verich cherry orchard under the direction of Archie Joint. The lawyers ate and drank to their heart's content and went away from the orchard feeling that they would never want anything to eat again. The citizens of Doe Bay were given three rousing cheers for their many attentions and the delightful spread.

The crowning feautre of the day's entertainment was reached at Rosario, where the lawyers were the guests of Robert Moran, the shipbuilder, in the famous castle which he has only recently completed on the shore of Orcas island. The reception at the Moran castle will be one long remembered by the attorneys. Mr. Moran himself, accompanied by S. G. Lancaster, the famous road expert, was on the wharf to meet the visitors and led the way around the shore of the pretty little bay to the big home overlooking the straits. Mrs. Robert Moran was unable to appear in the receiving line, but several of her house guests were present to give attractiveness to the reception.

The $1,000,000 dwelling house was open for free inspection. The amazed visitors roamed from the big reception room to the billiard room and bowling alley, into the gymnasium with its wonderful swimming pool, through the laundry and on upstairs into the magnificant music room that cost the shipbuilder many thousands of dollars to build. All seated themselves in this room and Mr. Moran himself operated the great pipe organ. For once during the day the lawyers were quiet. As the deep tones of the pipe organ sounded the notes of the old masters, they sat and looked out of the windows, across the sun-lit bay, with the dark green forests on the nearby hillside as a background, and forgot the ordinary trials and tribulations and common pleasures of life.

After the music came the most delightful and wonderful part of the entertainment. The lawyers had intended staying at Rosrario only an hour on account of the desire of the captain of the boat to return to Bellingham in time to go to Seattle on the regular night run. The Seattle office of the steamboat company was communicated with from the Moran home and a delay of a half hour was secured.

S. G. Lancaster, the road expert who is a guest at the Moran home, furnished the entertainment that so delighted and amazed the visitors. The music room was darkened, a curtain lowered over the windows facing the bay, and some of the most wonderful pictures ever made, exhibited by means of a stereopticon lantern.

The first pictures were of buildings and scenes at the late Seattle exposition. The others were of views in the Rainier National Park and on Puget Sound. The mountain pictures were the most wonderful and Mr. Lancaster, in a delightful talk, as the slides were exposed, told of the wonders of this great Western country and of the possibilities of making it a mecca for tourists from all parts of the world.

Mr. Lancaster was forced to make his talk short on account of the limited time for the visit of the lawyers. It was his intention, so he stated previously, to start the ball rolling for a movement at this time for beginning a campaign of advertising of the scenic beauties of the Puget Sound country. In his hasty talk however, he gave only an intimation of his plans. It is stated that it is the intention of Mr. Lancaster to make a trip through the East within the near future for the sole purpose of exhibiting the very series of pictures which the lawyers were given the privilege of seeing in the Moran home yesterday. The talk of the famous road expert instilled the plan in the minds of a number of lawyers and it is expected that more boosting will be done for the Puget Sound country in the future than ever before.

On the veranda of the Moran home the lawyers congregated on leaving and gave three rousing cheers for the shipbuilder and Mrs. Moran and as the boat pulled out of the little harbor the whistle was blown and the attorneys shouted until they were hoarse, marking in an unmistakable way the enthusiasm and pleasure with which they regarded the trip to the Moran castle.

There were a number of men on the excursion who are numbered among the prominent men of the state today. Superme Court Justices Rudkin, Chadwick, Mount, Morris and Gose were there, and took lively parts in the day's pleasure. Superior Judge Yakey of Kitsap county, and Judge Steiner, of Douglas and Grant counties, were also present, in addition to the two local judges.

Hi Gill, mayor of Seattle, was there. This distinguished gentleman, minus his corncob pipe, came up early yesterday with Attorney Brown in that gentleman's special car, and was responsible for the boat leaving here fifteen minutes late. Hi came up dressed in a light summer suit and a nobby straw hat. When he finally did reach the boat landing he was as once relieved of his straw hat and given a light coat and a uniform borrowed from the purser of the boat, gold braid and all, which the distinguished gentleman from Seattle wore all through the day.

At Doe Bay Attorney John Roberts, of Seattle, captured a horse which had been left tied to a post near the boat landing and started out for the picnic grounds. Roberts overtook Frank Wright on the way

HOME OF ROBT. MORAN, ROSARIO, LOOKING TOWARD THE NORTHEAST.

MUSIC ROOM IN MORAN HOME, VIEW FROM UNDER GALLERY.

and the cannerymen insisted on riding. Crobe to have up his mount and Wright took the animal on a dead run to the cherry orchard and about the first person he met there was the owner of the animal, who was in an exceedingly hostile frame of mind.

It turned out that a game had been played on Wright and that the horse had been turned over to him so that he would have to face the task of explaining why the animal had been taken.

'I rode that horse several years ago,' Wright was heard to say, in explaining his action to the pioneer of Doe Bay. 'It looked familiar and I really thought it was mine.'

Attorney Roberts, assisted by several other able-bodied members of the bar, then arrested Wright, arraigned him before Chief Justice Rudkin and charged him with horse stealing. Wright was acquitted of the charge, against the loud protests of the attorneys before the bar.

On the arrival of the excursion boat in this port last evening at 8 o'clock, C. C. Gose, the retiring president of the association, addressed the lawyers congregated on the forward deck of the boat, expressing the deep appreciation of the visiting lawyers for the entertainment provided by the members of the local association. Three cheers were given for the Bellingham association and then the lawyers went down the gangplank and separated, to meet again in Spokane a year from this month, when C. W. Howard, of this city, will preside over the meetings as president."

SUPERIOR JUDGES CONVENTION.

In response to a call sent out by Judges Kellogg and Hardin, a convention of Superior Court Judges was held the two days, July 26th and 27th, preceeding the State Bar Association meeting. The purpose of this convention was to revise the rules of the Superior Courts. Judge Joiner was made Chairman of the convention and Judge Clifford, Secretary, with S. E. Leitch, deputy Clerk of Whatcom county, as assistant secretary.

The Judges were banqueted by Judges Hardin and Kellogg and otherwise entertained by the Bench, Bar and citizens of Whatcom county.

The Rules* were adopted to go into effect Nov. 1, 1910 by the following judges:

Geo. A. Joiner, Mt. Vernon.	O. R Holcomb, Ritzville.
Donald McMasters, Vancouver.	R. S. Steiner, Waterville.
A. E. Rice, Chehalis.	John B. Yakey, Port Orchard.
Thos. H. Brents, Walla Walla.	D. H. Carey, Colville.
John R. Mitchell, Olympia.	C. H. Neal, Davenport.
J. N. Pickrell, Colfax.	R. B. Albertson, Seattle.
M. L. Clifford, Tacoma.	Boyd J. Tallman, Seattle.
W. O. Chapman, Tacoma.	Wilson R. Gay, Seattle.
C. M. Easterday, Tacoma	John F. Main, Seattle.
Wm. A. Huneke, Spokane.	A. W. Frater, Seattle.
Henry L. Kennan, Spokane.	Mitchell Gilliam, Seattle.
E. H. Sullivan, Spokane.	J. T. Ronald, Seattle.
J. D. Hinkle, Spokane.	Ed. E. Hardin, Bellingham.
J. Stanley Webster, Spokane.	John A. Kellogg, Bellingham.

*These rules have been published by most of the courts but will probably be included in the next report.

PROSECUTING ATTORNEYS.

The third annual convention of Prosecuting Attorneys was held in conjunction with the State Bar Association. John L. McMurray of Pierce County was elected President for the ensuing year and John Truax of Adams county, Secretary.

The convention adjourned to meet the same time and place as the State Bar Association, next year.

APPENDIX

HON. C. C. GOSE.
Retiring President.

PRESIDENT'S ADDRESS

C. C. Gose.

We meet again as an association of the lawyers of our state to commemorate and perpetuate, as best we may, the higher ideals of our profession, and secure to ourselves those results which should naturally and logically proceed from the close and intimate association of our members. We are all interested in maintaining and establishing a high ethical standard within the profession, in preserving the law in all its ancient vigor, in clinging closely to those precepts of the law which the experience of the ages has shown to be conducive to the welfare of mankind; in striving that the law may continue to grow and surround with additional safeguards and security our citizens, in the constantly shifting and changing demands of a more complex civilization.

The mental standard of our members, the educational and moral qualifications and the legal training required of those seeking admission to the bar are all meeting with the earnest consideration of the lawyers throughout the whole country, and it is no doubt the hope of all of us that each of these higher qualifications may be secured as the result of the interest that has been taken in them. All lawyers who properly appreciate the functions and the duties of their profession will agree that each of these standards in actual experience and in ultimate results are more likely to be placed too low rather than too high; that the tendency is always toward a lower level unless a profession through its members is continually seeking and demanding improvement, and that a proper appreciation of the dignity and responsibility of our duties should ever be kept alive and active. Of all the professions, among all lines of individual effort, the bar has least of all become commercialized. The precepts of the law which we are day by day seeking to have enforced in behalf of our clients as essential truths have been developed and established by the master minds of the centuries since civilization first began to establish itself upon our earth.

No law can survive unless it logically approaches perfection; unless its object, aim and ultimate result is of advantage to mankind. The true lawyer demands that the law be expressive of the true rights of the citizens; that it preserves and protects each man in exact equality under the law; that it is a rule which applies with equal force and equal effect with everyone to whom it applies; that it

neither preserves one man nor condemns another. It is equally important that no law should ever be written except in urgent necessity; that many things which may be attended with evil consequence when abused are not to be regulated by human laws, but rather are to be left to be ameliorated and reformed and prevented by moral teaching witnin the family and within the state. We know that human liberty should not be transgressed except as the higher necessities of the state demand such action.

We are far too prone to see evil in what our neighbor delights in doing and in that which affords to ourselves no element of personal enjoyment or individual temptation. Each of us could easily formulate a law to correct all vices except our own. All good lawyers appreciate, and are fully alive to these simple propositions because the daily experiences of their practice are continually demonstrating them. It is very easy for the lawyer to understand that laws can neither be written nor enforced so as to secure, under all circumstances and in all cases, either precise equality or exact justice. There are so many opportunities between the commencment of a suit and its final determination for even the best lawyer and the wisest and most upright judge to err that the wonder is that so little cause for complaint has arisen against the bench and the bar.

The layman expects the law to be simple, easily understood, of but one meaning, and of but one possible interpretation. He cannot understand why this should not be so, and he is strongly inclined to believe when two lawyers disagree upon the proper interpretation to be placed upon a law, one, at least, if not both of them, must be dishonest. He is ready to contend with all comers that no lawyer ever drafted a statute which he did not foul with contradictions and in which he did not include some provision in the special interest of some favored client. He feels confident that if he were left to write the law, it would be so simple that he who runs might read it and that all men would concur in its meaning and agree as to its proper interpretation.

It is clear to us all that every lawyer should be trained, educated and morally refined in the law, and that high standards in each of these respects should be exacted of every applicant for admission to the bar.

The difficulty lies in the attainment of these ideals. We should all be alive to the need of the high ethical and moral standards at the bar and insistent that in so far as it may be, these standards be preserved and safeguarded.

It falls to the duty of some member of the bar to frame most of the laws and to the lawyer and the judge to reach a true interpretation of all of them. When we consider the wide range of subjects to

which the law under the complexities of modern civilization has to apply, the rights to be enforced, the duties to be exacted, the privileges to be protected, the natural disposition of all men to look upon a law restrictive of their privileges, as being violative of their rights, we may feel a pride in the practical uniformity with which courts have resolved the law, and preserved it as an essential and active working force for the upbuilding of civilization.

I believe that no one but the lawyer appreciates how utterly impossible it is to write into a law in express provision, all that the law is intended to mean, and all that it must of necessity mean, in order that it may fulfill the object for which it is enacted. How of necessity it developes and broadens and grows to meet, under the direction of the wise and upright judge, new situations and new conditions. In all this movement the lawyer has his mission, whether at the bar or bench, and he who is best trained in the growth of the law, who knows the tap roots from which it has sprung, who is most alive to the spirit which lies within it, whose heart is most quickened by high moral impulse, who is best endowed with natural and acquired mental attainments, is he who will stand highest in the laws last analysis. Here stands and awaits the lawyers highest opportunity; the framing of the law, and the interpretation of the law.

In order that he may frame the law as it should be written, he must be trained in the needs and requirements, the social, political and business interests of the people which the law is to serve. He must have reason for believing that the law which he proposes is conducive to the welfare of the state, that the privileges and liberties which it destroys may safely be yielded up and with profit to the people in return for the larger benefits which will accrue. The law should never be written that necessity does not demand—a people may live and prosper under too few laws. The history of mankind establishes this beyond question, but a law not required or justified is an inexcusable tyranny. Our liberties, our privileges, our lives and our property are to be preserved by law, and none of them are to be infringed upon or destroyed except when the clear requirements of the state demand and justify such action.

I am a firm believer in the old order of things in this country of ours, and I lean strongly to the belief that we are much more oppressed with an excess of laws than we are suffering for the want of laws not yet enacted. Our legislatures, without any demand whatever on the part of bench or bar, or the people at large, seem to take a particular delight in striking at and repealing statutes whose only object is to provide procedure. Our school laws, revenue laws, criminal laws can never know a day of rest. Each recurring legislature has within its ranks some member who feels the call to re-

vise, amend and repeal. Our whole criminal code or practically all of it is a new enactment, and we now have a great number of interpretative decisions, resolving the old law of no practical value. The interpretation must begin anew under the new law, and before the newer interpretation begins to walk, another legislature is likely to again amend or repeal the law.

This destroys the stability of the law, without which not even lawyers, much less laymen, will long continue to respect the law. We all know how satisfactory even a defective procedure statute may become in the light of repeated interpretation by the court, and while we would be willing and desirous that the law should be different were we writing it as a new law, we should be slow to agree that any one should attempt to improve it after it has existed as a working statute for a period of years. The trouble with much legislation lies in the fact that but one side of the question is given any consideration. The evil is more or less plain, depending upon the sympathies, ideas and ideals of the proposer of the law. The attendant evils that may follow the law on the other side of the equation are left wholly unconsidered. Each recurring legislature leaves to us a great body of law, much of it of no value, some of it, I might say, much of it, positively harmful. Each recurring print of our session laws is more spacious and more pretentious than the last, and one wanders through it in vain in the search for needed legislation.

Nothing is too small to legislate upon—only the needed legislation is overlooked. Throughout our state today many people are crying out for Initiative and Referendum in legislation, and for commission government in cities. The one is excessive democracy, the other extreme centralization. For Initiative and Referendum a pure democracy, the people are willing to yield their representative form of government. They see, or imagine they see, evils existing under our present system, and look for a cure of these evils, not in a wise reform of the system, but in a radical revolution towards a system which has been often tried under far more advantagous circumstances and conditions than those to which they are now to be applied, and has in every instance proven a failure. It seems to me that the adoption of this principle would inevitably lead to hasty legislation, to the passage of laws without that trained consideration which should precede the passage of every law, and with no opportunity to meet with proper amendment and revision between the proposal and enactment of the law. I am firm in the belief that the making of laws should not be made too easy, that some restraint, some difficulty in the way of placing a law upon the statute books, is more conducive to the ultimate welfare of the people.

This delay results in the ultimate sound sense of the people be-

coming expressed in the law, rather than the first wild excess which needs the pruning hand of time to top off its over luxuriance.

I think we can all see that this impression is gaining ground, both in railroad and illegal combination legislation. A decade or so ago the opinion was practically unanimous throughout the country that railway combinations must be prevented in order that reasonable rates might be secured under competition. Today the wise legislators are looking to the public service corporation commission to secure such relief to the people, and the fear of combination is practically eliminated. On the other hand, a recent interpretation of the anti-trust act has convinced many people if this ruling is to stand, that the provisions of this law are too sweeping and too severe, and should be so modified as to allow combinations within certain defined limits. Even the most carefully considered law may not reach the end to which it aims, or, on the other hand, may strike a blow at the very business that it was designed to foster and to protect.

Representative government is too well established to be lightly cast aside. We must be convinced that its faults are beyond correction, that the remedy proposed is an efficient and a needed one, before we leap from the ills which we have to those of which we know nothing. Higher attainments on the part of our legislators would do much to remedy our evils, and unless the people are able with the ballot in their hands to secure honesty and efficiency in their legislators, it is hard to believe that they are capable of securing relief through hasty and ill-considered direct legislation.

It is one of the precepts of the direct legislation league of this state that our laws shall be simple and easily understood. If you and I, gentlemen, possessed the lucky faculty of always clearly expressing our actual thoughts in language so thorough, precise and exact as to leave no doubt as to what our words were to be resolved to mean, a faculty that the Creator has not, as yet, granted to any man, even though he were inspired to write the Scriptures, our paths in this world would be easy and delightful.

The representative system of government has been the only form of government which has stood the test of time and still preserved to the citizen the reasonable enjoyment of life, liberty and property. Under it civilization has grown and advanced and wealth and prosperity has become the established order. This system has not resulted in such perfection as to reach the ideal by any means, but this is not the fault of the system, but rather the result of the limitations which nature has imposed upon us.

It should be clear that laws should be enacted by those who are specially fitted by nature and training to do the work, and by those who understand the nature of our government and the genius of our

institutions. The making of laws lies as much in the domain of tra n ing and specialization as do the duties of the learned or business professions.

The cure for impractical and improper legislation lies in the reformation of legislatures, in securing men of greater fitness and capacity as legislators, in demanding that candidates for the legislature shall offer proper credentials showing special mental, moral and educational qualifications for the duties that they are seeking to assume. If the people cannot work out these reforms, if they cannot be made to appreciate the fact that legislative duties require legislators specially fitted for the service, if they cannot awake to the fact that the duties of the legislator are exacting, that the making of laws require special capacity and training and fitness, they enter upon their duties of making laws by direct legislation totally unqualified, and the result will be extreme unwise and conflicting legislation.

This is a grave question that must be resolved and settled by the present generation, and it appears to me that lawyers are specially interested in rendering all possible aid to the end that it may be settled rightly.

There is also a growing demand that the people shall reserve to themselves the right of recall as a protection against dishonesty in office. I believe that the objections to placing the power of recall in the hands of the people are many and serious. The public officer should be selected for his fitness, honesty and capacity. He should first establish that he possesses these qualifications before his constituents should select him to serve them. He will best subserve the interest of the public who is least subservient to public or individual clamor. His duties should be fulfilled by measuring them in the light of his own honest judgment. That officer is least efficient who is most anxious to please and who is most susceptible to public sentiment, because he too often mistakes the noise of a few complaining malcontents for the unanimous demands of the whole people. We are all familiar with the public official who always has his ear to the ground and who tries to turn his sail to catch every fleeting wind. These things will be bred in the public official who continually stands face to face with the possibility of even threatened recall.

I believe that in this principle we again have the wrong remedy for relieving us of the corrupt and incapable official.

If our capacity to select the proper official is so small that we can learn his capacity and integrity only by putting him to the test, we still have a long race to run before we have demonstrated our fitness to be trusted with and to enjoy our system of self government. You cannot give the elective franchise to a man without there immediately

following in his own mind an assumption that he is peculiarly qualified to fulfill the duties of any office to which he may aspire, and it is most surprising how many of his fellow citizens will concur with him in this belief. It results that many of our public offices are filled by men wholly unqualified in character and training for the duties which they undertake to perform. A higher mental and moral test for candidates for office, a livelier interest in securing proper candidates, a closer application of the tests employed in matters of busness would result, if actively followed, in a higher and better type of public officials.

I realize that these are in a sense idealizations, but ideals can never be approached without some effort being put forth to attain them.

I have already said that the present trend of legislation is reaching broadly toward democracy. We are also drifting in a considerable degree toward socialism, toward marked limitation upon our liberties, our privileges, and the enjoyment of property rights. There seems to be an unceasing demand that governments should exercise a sort of parental control over its citizens, that instead of leaving the citizen to work out his own salvation through his own individual efforts, the government should guard and support and sustain him—and our books are full of statutes working in greater or less degree to this end. Many, perhaps most of tne laws now in force, having these objects in view are probably meritorious and worthy of perpetuation, but these laws are in many cases being used as offering support for legislation far more extreme. They are sought to be used as stepping stones to government ownership, old age penions, excessive pensions to soldiers, laws requiring employers to insure their employees against their own negligence, government exploitation of public lands and public resources. Some of these theories have already gained a foothold under our law and all of them are likely to be accepted as necessary governmental functions within the next ten years.

As these theories grow into the established law of our country they naturally enlarge and complicate the requirements which the lawyer must bring into application in the practice of his profession. We have a new school of statesmen who are teaching that government should be nonpartisan.

It seems to be the natural trend of men, whatever the form of government under which they live, to enact and administer their laws within partisan lines. It has been the dream of more than one statesman that partisanship should and could be eliminated; that liberty and law could best move together if the people would act in unison untrammeled, uninfluenced and uncontrolled by partisan beliefs and prejudices, and many a warning has been sounded in the hope that

party feeling might be made an end of. All experience has taught the futility of such a hope and the unwisdom of such teachings. Men will not think alike, do alike, or desire alike—there can be no approach to exact truth, and it is only out of diversity of opinion, and strife and discord, that truth has even been realized.

The stronger the strife, the more bitter the fray, the more highly is character builded, the more active does the human mind become in working out the problems that are to be resolved in the life history of the human race.

In representative government we find the best opportunities for these divergent ideas and opinions to meet. Here is opportunity for discussion, for careful consideration and for reaching the proper determination in matters requiring legislation. We will make a serious mistake if we depart far from the theories of government established by the fathers of our country.

The legislation enacted by the last National Congress has been wide in its scope and in many respects drastic in its provisions. The creation of a court of commerce with jurisdiction to hear and determine all matters pertaining to rate regulation of public service corporations engaged in interstate commerce is in response to a demand that means should be provided by which cases involving these matters should be speedily heard and determined, untrammeled by other litigation coming before the courts. The bill creating this court goes much further however, and naturally increases the powers of the interstate commerce commission.

The ultimate value of the legislation should work largely to the betterment of conditions which have been a continual cause of complaint in the past, and it is to be hoped that the provisions will be found adequate to meet the purposes for which they have been enacted.

The postal savings bank bill has been enacted in response to a growing popular demand for a depository under strict governmental regulation and guarantee, which could at once secure the hoarded means of the poor man, as well as furnish inducement to the poor to become saving and thrifty. This legislation has not met with the hearty support of the bankers of our country, and is regarded by many as being, under our system of government, highly experimental. The practical working of the system will be watched with much concern by financial interests.

The National Congress has also enlarged to a very radical degree the powers of the president over the public lands, and has given him authority to withdraw at will these lands from public entry, a right which has been exercised by the present and preceding administration without express authorization, and possibly without support of

any law either expressed or implied. The reclamation service has been provided with additional funds, and the work in which this service engaged will be carried out much more rapidly and effectively than it has been in the past. The larger areas which will thus become productive in the West will naturally develop and increase the prosperity of our section of the country.

Our National Congress has also shown itself to be in strong accord with the conservation policies of the last administration. There is a growing demand, however, on the part of the people of the West, in whose localities this policy is to be most strictly enforced, and whose interest are most vitally affected, that this policy be limited in its scope, and be carried out strictly in the interest of th people of the states within which the public lands lie. It has been the policy of the government in the past to treat these lands as being held in trust for the benefit of the actual occupant—that occupation and utilization led to ultimate private ownership. Under this policy the West has grown and developed as no other country has in the world's history, vast areas thought worthless a generation ago have become active in producton, and there has grown up in the area west of the Mississippi a wealth which rivals that of the greatest countries of Europe, and a citizenship which is at once the admiration and the pride of our whole country.

It has been my hope that I might dwell upon these several matters as legal rather than as political questions, but the law as enacted, and especially the national law, is so ntimately associated with our political history that this desire cannot be fully realized without making an address wholly negative and recitative.

I trust that the bench and bar may continue to be in the future as in the past, the most active and most efficient force in the enactment and in the analysis of the law.

IRA BRONSON.

ADMIRALTY JURISDICTION

By Ira Bronson.

When the subject under discussion first received attention from the judges of the United States courts, the flag, which is today the oldest and yet least seen among the nations of the earth, presided over a merchant marine second only upon the sea; and the energies of this lusty young nation were engaged in a trade which extended over the known world. The trade of several single ports surpassed that of all the country west of the Allegheny Mountains. Without inquiring as to when the saying arose, the saw that "Freight is the mother of wages," indicates the importance of our forefathers of the commerce which they had created. And the necessity for establishing courts which could speedily adjudicate the rights and liabilities of the carriers of a trade which had even then dwarfed that of all antiquity and which was soon to sink it into insignificance was not only highly appreciated but immediately and vigorously asserted. The disposition of many judges however to resist the encroachment upon the right of trial by jury gave rise to the discussions, a brief perusal of which, I have hoped might be of interest to this meeting, and a careful reading of which decisions *in extenso* cannot fail to be of rare interest and of considerable instruction.

If I may urge another justification for this paper, it is; that the subject-matter, having been one of dispute between great lawyers and judges, has naturally given rise to those contests of the mind which invariably interest the studious lawyer; and that the arguments of counsel and the judgments of the courts are mines of legal learning and ofttimes of forensic eloquence, portraying the zeal and sometimes the close approach to passion with which this question has been fought out; and finally that after the smoke of battle, the field is now clear and the highway well defined.

I have *sought to state the law in the words of the judges* rather than through my own more feeble language.

Admiralty Jurisdiction Under the Constitution.

Section 2 of article 3 of the Constitution of the United States, omitting several clauses with which this subject is not concerned, reads as follows: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction." In this short terse language, is granted to the United States, jurisdiction of a department

of the law which affects the relation of the people, not only to each other, but to the commerce of the entire world; the origin of which department is to a greater extent than any other, lost in the mists of antiquity. Even considering the remarkable brevity of the constitution itself, the paragraph in question is unique, particularly in the light of the consequences to flow therefrom. And principally among these being, that while it did not remove from the realm of the common law a large and intricate procedure and substantive law, because, strictly speaking, the domain of admiralty was never included in the common law as such, nevertheless it did have the practical effect, under the interpretation placed thereon by the courts of the United States, of enabling *litigants* to remove from the jurisdiction of the common law courts the power to administer a large and ever growing class of litigation which under the decisions of the courts of common law of England, aided by the ordinances of Edward I and Edward III and the statutes of Richard II and Henry IV had finally, and prior to the adoption of our constitution, been removed from the control of the admiralty courts and brought within the domain of the common law.

Section 9 of chapter 20 of the Laws of the United States, at the First Session in 1789, provided as follows:

"And be it further enacted, That the district courts, * * shall also have exclusive original cognizance of all civil causes or admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it."

This curtailment of the rights to trial by jury, by the intervention of the civil law of Rome as exemplified in the procedure of the admiralty courts, had occupied the attention of the courts of England for over three hundred years; and immediately gave rise to a controversy in this country which lasted for over half a century. The cases from which I shall quote will not justify the statement that the entire field of jurisdiction was vigorously in dispute for any such length of time, but amply illustrate the fact that the champions of a common law jurisdiction, analogous to that of England, fought their way steadily backward, resuming the fray at one position, as readily as they lost at another.

It may not be amiss to briefly consider the rise and fall of the prestige of the admiralty courts of England as effecting the subsequent debates in our own courts.

The jurisdiction of English common law courts was, as one would naturally expect in considering their origin and development, at first very narrow and extremely illogical. The dignity and power of the admiralty court in England, previous to the limitations imposed upon it by the common law judges, grew out of, not only the prerogative of the King, but the vastly more important fact, that the common law courts originally were not only local in character, but were considered to be local in jurisdiction. In other words, it was necessary to allege and to prove that cause of action arose within the body of the county; and as the maritime commerce of England gradually increased, and then suddenly expanded upon the fall of the maritime power of Spain, following that of other European nations, the business of the King's High Admiral expanded with it, and the admiralty court was the only one which could take jurisdiction of this vast and growing business incident to a world wide commerce. It was undoubtedly the jealousy of the common law judges, aroused by the great and growing importance of the admiralty courts, which induced them, in casting about for a means of sharing in this glory and responsibility, to sweep away the limitations attending upon their jurisdiction; the most important step in which was in holding that the allegation that a matter or thing had occurred within the county was immaterial and therefore non-traversable; and thereafter the allegation that any transaction, no matter where it may have occurred, was had or done within any given place or county, need not be proven and could not be denied.

The next step was in the curtailment of the power of the admiralty courts, and in seeking to confine them to matters *which arose upon* and were to be performed *upon* the high seas; to the adjustment of sailors' wages and contracts in the nature of bottomry and respondentia; and to exclude them from all matters and things which took place within the body of any county of England; and, as most of the navigable waters of England were within the ebb and flow of the tide and below the first bridges spanning such rivers, a distinction as to navigability grew up which, as will hereafter be seen, was very illogically attempted to be applied to thousands of miles of navigable rivers in this country after the establishment of the Federal courts. The English common law judges, supported by the acts of parliament above referred to, issued writs of prohibition against the admiralty courts and attempted to, and untimately did, shear off all of the vast prerogatives which they had so long exercised, and confined them within limitations not only small in capacity, but wholly illogical in principle and violative of every system of maritime jurisdiction which the civilized world has ever known.

In analyzing this subject it should always be borne in mind that the law of the admiralty is peculiarly a law of nations; and from the

force of circumstances must blend as much as possible the various laws and customs of the commercial world together; not only for the peaceful relationship of mankind, but for the development of trade and commerce throughout the world. I think much of the confusion and uncertainty which has existed as to the nature and extent of the admiralty jurisdiction, as well as admiralty procedure, has arisen from a failure to bear constantly in mind the fact that the constitution in the beginning, and the laws of the United States since, have *not created* the law of admiralty, or enlarged or narrowed it one whit, but have only sought to *define* it from time to time and from case to case as the questions arose.

The first case to which I desire to call your attention is the opinion of Judge Peters in the District Court for the District of Pennsylvania, decided in 1792. It is set forth as a foot note to the case as reported in Jennings v. Carson, 4 Cranch (2 L. Ed.), 531. No more as to the facts need be said than that it was a prize case. In the course of this opinion Judge Peters said:

"The first point waived, brings the question to the competency of jurisdiction. * * * On this point, as it first struck me, I confess I had doubts. The division of the court of admiralty into two sides, prize and instance, was new to me, and it is allowed not to have been generally known, if at all, by the common lawyers in England, before that case was determined. In this country it never was known. * * *

"Acting, as we now do, in a national and not a dependent capacity, I cannot conceive that we are bound to follow the practice in England more than that of our own or any other nation. * * * The admiralty proceeds from a law which considers all nations as one community, and should not be tied down to the precedent of one nation, though it were more clearly ascertained.

"What is, perhaps, of most consequence, is to ascertain the intention of Congress in distributing a power, *clearly in them*, to their judiciary departments. * * * By recurring to the 12th, 13th, 19th, 21st, and 30th sections of the judiciary law, it will appear that Congress meant to convey all the powers, (and in the words of the constitution,) as they possessed them, in admiralty cases. * * *

"For the foregoing reasons, and some others which might be added, I am of opinion that this court possesses all the powers of a court of admiralty, and that the question of prize is cognizable before it. I have gone thus far into the discussion of this point, because I believe it is the first time it has been agitated in a federal court."

From the foregoing opinion, it is readily seen that in the very beginning such able men as Judge Peters not only viewed with distrust the limitations placed upon the admiralty jurisdiction by the English judges, but promptly disaffirmed any dependence of the courts of the United States thereon as guides in admiralty jurisdiction.

In 1796, the case of La Vengeance, 3 Dallas 297 (1 L. Ed., 610), came before the Supreme Court of the United States upon an information filed against a privateer in the district court for the forfeiture of the schooner, based upon the exportation of certain arms and ammunition. Attorney General Lee contended as follows:

"The 9th section of the judicial act declares that 'the trials of issues of fact, in the district courts, in all causes, except civil causes of admiralty and maritime jurisdiction, shall be by jury.' The principles regulating admiralty and maritime jurisdiction in this country, must be such as were consistent with the common law of England, at the period of the revolution. Now, then, would a similar case be considered in England? Blakstone says, 'all admiralty causes must be causes arising wholly upon the sea, and not within the precincts of any county.' * * * Now, the offense here charged is that of exporting arms and ammunition out of the United States to Port de Paix. The act itself, indeed, without the intervention of the statute, would, doubtless, have been lawful, but an act of exportation, from the force of the term, must be commenced here; and if done part on land, and part on sea, the authorities decide, that the admiralty cannot claim the jurisdiction."

The Supreme Court, by Chief Justice Marshall, held against the contention of the attorney general and that the cause was within the admiralty jurisdiction and that no jury was necessary. The attorney general's opinion is a fair illustration of the error which so persistently stuck in the minds of many lawyers of that day.

In the case of Hughes v. The Schooner Betsy and Charlotte, reported in 4 Cranch, at page 673, former Attorney General Lee, in defending a vessel condemned in the district court for violation of the laws of the United States, again made an extended argument in favor of the limited jurisdiction of admiralty courts, in which, among other things, he said:

"The question, then, is whether, according to the understanding of the people of this country at that time, when the constitution was adopted, a seizure of a vessel, within the body of a county, for breach of a municipal law of trade, was a case of admiralty cognizance. It certainly was never so considered in England, from whence we draw all our ideas of admiralty jurisdiction. A court of common law is as competent to the trial of such cases as a court of admiralty. *

* * I argued the case of the Vengeance, and I know it was not so fully argued as it might have been; and some of the judges may recollect that it was rather a sudden decision."

It will be seen from this that the Supreme Court of the United States had taken this one step at least: That not only in prize cases but in seizures for violation of the laws of the United States, in civil cases, the admiralty had superseded the right of trial by jury.

Justice Chase evidently was nettled by the reflection that the decision of the court was illy considered and replied:

I recollect that the argument was no great thing, but the court took time and considered the case well. The reason of the legislature for putting seizures of this kind on the admiralty side of the court was the great danger to the revenue if such cases should be left to the caprice of juries."

The opinion of the court by Chief Justice Marshall is as follows:

"The court considers the law as completely settled by the case of the Vengeance. * * * It is th place of seizure, and not the place of committing the offence, which decides the jurisdiction.

* * * It is clear that Congress meant to discriminate between seizures on waters navigable from the sea, and seizures upon land or upon waters not navigable; and to class the former among the civil causes of admiralty and maritime jurisdiction.

"The only doubt which could arise would be upon the clause of the constitution respecting the trial by jury. But the case of the Vengeance settles that point."

In the United States District Court for the District of Maryland, in 1801, the case of Stephens v. The Sandwich, reported in 1 Peters Admiralty cases, 233, had arisen over the building of a ship and the lien asserted by the builder therefor. The opinion of Judge Winchester contains the following:

"By the judiciary act the district court has exclusive original jurisdiction of all civil causes of admiralty and maritime cognizance. And it is somewhat remarkable that neither this act, nor the constitution which it follows, limit the jurisdiction in any respect as to place. It is bounded only by the nature of the causes which it is to decide. Its jurisdiction will not be better understood than by an inquiry into the original acceptation of admiralty powers. A tribunal similar to the district courts of the United States exists in every civilized country, peculiarly invested with the cognizance of all questions which result *from the navigation of the sea*, in which foreigners are or may be interested, and which are governed by the law of nations. Hence the authority and binding efficacy which has been gen-

erally conceded to the sentences of admiralty courts. In England the control of their own navy, in France the right of fishery, in Holland the preservation of the dykes and mounds, and in Denmark and Sweden the superintendence of the revenue, are confided to their courts of admiralty—and different as they are in their qualities, and local as they are in their nature, they are alike denominated admiralty causes. The policy, justice or general convenience of the local regulations of commercial states, have been more or less adapted or extended to different countries; and what all adopted, all became equally interested to support. The civil law, the laws of Rhodes, and Oleron, and the particular municipal regulation of towns and nations bordering on the sea became of course the common rule of decision. In England, where the jealousy of the civil law was most conspicuous, while its authority was openly denied, the principles of equity derived from that Code, influenced the decisions of their courts in as great a degree as in countries where it was adopted.

"In all of which from the books within my power, I can obtain any legal information, every contest or dispute, between the owners and mariners, and the owners and builders, or equippers of a ship for navigation on the sea, is of a maritime nature and cognizable in the admiralty. The statutes 13 & 15 Rich. II. have received in England a construction which must at all times prohibit their extension to this country.

It is with the case of De Lovio v. Boit, decided in 1815, reported in 2 Gallison 398 (Federal Cases No. 3776), that we meet with the most scholarly and profound opinion which has ever been written upon the subject under discussion. Mr. Justice Story occupies some 50 pages in what amounts to a treatise upon the origin and extent of the jurisdiction of the Federal District Courts as courts of admiralty, and although this opinion is not that of the Supreme Court (of the United States) and although it was subsequently and vigorously combatted by judges of equally high *official* standing, I cannot do better than quote at some length some parts of this opinion.

"This is a libel brought in the district court upon a policy of insurance. * * * There is a plea to the jurisdiction, and the present question rests solely on the general sufficiency of that plea as a declinatory bar. It has been argued, and now stands for judgment. I shall make no apology for the length of this opinion. The vast importance and novelty of the questions, which are involved in this suit, render it impossible to come to a correct decision without a thorough examination of the whole jurisdiction of the admiralty. I shall, therefore, consider, in the first place, what is the true nature and extent of the ancient jurisdiction of the admiralty; in the next place, how far it has been abridged or altered by statutes, or by com-

mon law decisions; and in the last place, what causes are involved in the delegation by the constitution of the judicial power of the United States of all cases of admiralty and maritime jurisdiction."

* * *

"What was originally the nature and extent of the jurisdiction of the admiralty cannot now with absolute certainty be known. It is involved in the same obscurity, which rests on the original jurisdiction of the courts of common law. The forms of its proceedings were borrowed from the civil law, and the rules by which it was governed, were, as is every where avowed, the ancient laws, customs and usages of the seas. In fact, the admiralty of England, and the maritime courts of all the other powers of Europe, were formed upon one and the same common model; and their jurisdiction included the same subjects, as the consular courts of the Mediterranean.

* * *

"Such are some of the relics of antiquity, which are to be found in the learned treatises on the admiralty jurisdiction. From a historical review of them; from the consideration that in all other states in Europe, maritime courts were about the same period established, possessing the same jurisdiction, viz., over all maritime torts, offences, and contracts, proceeding by the same forms, viz., the forms of the civil law, and regulated by the same principles, viz., the ancient customs of the seas; * * * from the consideration that commercial convenience, and even necessity, at the same period, required a court of as extensive jurisdiction in England, and the acknowledged fact, that from its earliest traces the admiralty of England is found exercising a very extensive maritime authority, governed by the rules and forms of preceeding of the civil law, and, where statutes were silent, by the usages of the sea; from all these considerations it has been inferred, and, in my judgment, with irresistible force, that its jurisdiction was coeval and coextensive with that of the other foreign maritime courts. At all events, it cannot be denied upon these authorities, that before and in the reign of Edward the Third the admiralty exercised jurisdiction. 1. Over matters of prize and its incidents. 2. Over torts, injuries, and offences, in ports within the ebb and flow of the tide, on the British seas and on the high seas. 3. Over contracts and other matters regulated and provided for by the laws of Oleron and other special ordinances, and 4. Over maritime causes in general.

* * *

"Let us now proceed to consider such cases, as have been supposed to impugn or weaken the conclusions, which have been at-

tempted to be drawn thus far in favor of the admiralty. And here we must rest altogether upon the citations of Lord Coke in his view of the admiralty jurisdiction in the fourth Institute. It is well known with what zeal, ability, and diligence, he endeavored to break down the court of chancery, as well as the admiralty. It would have been fortunate for the maritime world, if his labors in the latter case had been as unsuccessful, as in the former. There are many persons, who are dismayed at the danger and difficulty of encountering any opinion supported by the authority of Lord Coke. To quiet the apprehensions of such persons, it may not be unfit to declare, in the language of Mr. Justice Buller, that 'with respect to what is said relative to the admiralty jurisdiction, that part of Lord Coke's work has been always received with great caution, and frequently contradicted. He seems to have entertained not only a jealousy of, but an enmity against, that jurisdiction.' "

He next proceeds to set up Lord Coke's position and then to demolish it in approved fashion.

"These are all the cases adduced by Lord Coke down to the time of 13 Rich. 11, to disprove the jurisdiction, which has been asserted in favor of the admiralty. Unless I am very much mistaken, they entirely fail of their intended purpose; and leave the current of ancient authority flowing with an uniform and irresistible force in its favor."

After citing numerous ancient cases Justice Story continues:

"Such then being the ancient or original jurisdiction of the admiralty, it will be in the next place proper to consider, in what respects it has been altered by statutes and decisions made since the period, of which we have been speaking.

* * *

"It may be well, in this connection, to take notice of another doctrine of the common law, viz., that where an act is done partly upon the land and partly upon the sea, the admiralty is excluded. Hence it is said, that if a ship be taken at sea, and carried in a port within the body of a county, the admiralty loses its jurisdiction. It is difficult to comprehend what an act is, that can be done partly on the sea and partly on the land; and still more difficult to perceive, how the bringing the property *infra praesidia* (if I may so say) can deprive the admiralty of its jurisdiction. The *corpus delicti* still remains, and, until the property so brought within the power of the court, it would be strange, indeed, if the only circumstance, which would render the jurisdiction effectual, should take it away.

"The clause however of the constitution not only confers admiralty jurisdiction, but the word 'maritime' is superadded, seemingly *ex industria*, to remove any latent doubt. 'Cases of maritime jurisdiction' must include all maritime contracts, torts and injuries, which are in the understanding of the common law, as well as of the admiralty, *causae civiles et maritimae.*' In this view there is a peculiar propriety in the incorporation of the term 'maritime' into the constitution. The disputes and discussions, respecting what the admiralty jurisdiction was, could not but be well known to the framers of that instrument. One party sought to limit it by locality; another by the subject-matter. It was wise, therefore, to dissipate all question by giving, cognizance of all 'cases of maritime jurisdiction', or, what is precisely equivalent, of all maritime cases. Upon any other construction, the word 'maritime' would be mere tautology; but in this sense it has a peculiar and appropriate force. * * * The language of the constitution will therefore warrant the most liberal interpretation; and it may not be unfit to hold that it had reference to that maritime jurisdiction, which commercial convenience, public policy, and national rights have contributed to establish, with slight local differences, over all Eurrope; that jurisdiction, which, under the name of consular courts, first established itself upon the shores of the Mediterranean, and, from the general equity and simplicity of its proceedings, soon commended itself to all the maritime states; that jurisdiction, in short, which collecting the wisdom of the civil law, and combining it with the customs and usages of the sea, produced the venerable Consolato del Mare, and still continues in its decisions to regulate the commerce, the intercourse, and the warfare of mankind. Of this great system of maritime law it may be truly said, *'Non erit alia lex Romae, alia Athenis, alia nunc, alia posthae: sed et omnes gentes, et omni tempore, una lex, et sempiterna et immortalis, continebit.'*

"At all events, there is no solid reason for construing the terms of the constitution in a narrow and limited sense, of for ingrafting upon them restrictions of English statutes, or decisions at common law founded on those statutes, which were sometimes dictated by jealousy, and sometimes by misapprehension, which are often contradictory and rarely supported by any consistent principle. The advantages resulting to the commerce and navigation of the United States, from a uniformity of rules and decisions in all maritime questions, authorize us to believe that national policy, as well as juridical logic, require the clause of the constitution to be so construed, as to embrace all maritime contracts, torts and injuries, or, in other words, to embrace all those causes, which originally and inherently belonged to the admiralty, before any statutable restriction.

"On the whole, I am, without the slightest hesitation, ready to pronounce, that the delegation of cognizance of 'all civil cases of admiralty and maritime jurisdiction' to the courts of the United States, comprehends all maritime contracts, torts, and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts, (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea.

* * *

"The next inquiry is, what are properly to be deemed 'maritime contracts.' Happily in this particular there is little room for controversy. All civilians and jurists agree, that in this appellation are included, among other things, charter parties, affreightments, marine hypothecations, contracts for maritime service in the building, repairing, supplying, and navigating ships; contracts between part owners of ships; contracts and quasi contracts respecting averages, contributions and jettisons; and, what is more material to our present purpose, policies of insurance.

* * *

"In making this decree, I am fully aware, that from its novelty it is likely to be put to the question with more than usual zeal; nor can I pretend to conjecture, how far a superior tribunal may deem it fit to entertain the principles, which I have felt it my solemn duty to avow and support. What ever may be the event of this judgment, I shall console myself with the memorable words of Lord Notting ham, 'I have made several decrees, since I have had the honor to sit in this place, which have been reversed in another place; and I was not ashamed to make them, nor sorry when they were reversed by others.'"

In 1825, in the case of the setamboat Thomas Jefferson, reported in 10 Wheaton (6 L. Ed.), page 358, it is said:

"This is a suit brought in the District Court of Kentucky for subtraction or wages, and the question is, whether this case, as stated in the libel, is of admiralty and maritime jurisdiction.

* * *

"In the present case, the voyage, not only in its commencement and termination, but in all its intermediate progress, was several hundreds of miles above the ebb and flow of the tide; and in no just sense can the wages be considered as earned in a maritime employment.

"* * * Whether, under the power to regulate commerce between the states, Congress *may not extend* the remedy, by the sum-

mary process of the admiralty, to the case of voyages on the western waters, it is unnecessary for us to consider. If the public inconvenience, from the want of a process of an analogous nature, shall be extensively felt, the attention of the legislature will doubtless be drawn to the subject. But we have now only to declare that the present suit is not maintainable as a cause of admiralty and maritime jurisdiction, upon acknowledged principles of law."

It will be seen that the Federal courts were drawing the distinction between the great rivers in this country navigable far beyond the tide, and the rivers of England whose navigability was co-extensive, for all practical purposes, with the ebb and flow of the tide.

In case of Ramsay v. Allgre, reported in 12 Wheaton (6 L. Ed.), at page 747, is found the ablest opinion written against the jurisdiction of the Federal courts in admiralty and sustaining the English contention as it existed before the adoption of our constitution. While this opinion is to all intents and purposes a dissenting opinion, I am constrained to quote from it rather extensively for the reason that it, in that early day, (1827) very forcibly sets forth the opposition to the growth of the jurisdiction step by step as it was finally established:

Mr. Justice Johnson. "I concur with my brethern in sustaining the decree below, but cannot consent to place my decision upon the ground upon which they have placed theirs. I think it high time to check this silent and stealing progress of the admiralty in acquiring jurisdiction to which it has no pretensions. Unfounded doctrines ought at once to be met and put down; and dicta, as well as decisions, that cannot bear examination, ought not to be evaded and permitted to remain on the books to be commented upon, and acquiesced in, by courts of justice, or be read and respected by those whose opinions are to be formed upon books. It affords facilities for giving an undue bias to public opinion, and I will add, of interpolating doctrines which belong not to the law.

* * *

"The correctness of the decision in the case of *The General Smith* cannot be questioned. It dismisses the libel upon the ground 'that material men and mechanics, furnishing repairs to a domestic ship, have no particular lien upon the ship itself for the recovery of their demands. But why have they no lien upon the ship? or, to speak more correctly, why are they precluded from a remedy in the admiralty for subjecting the ship to arrest and sale in order to satisfy their demands? It is because jurisdiction over the contract has been taken from the courts of admiralty, and the exercise of jurisdiction, in such case, prohibited to them by the common law courts of Great Britain for hundreds of years.

"The study of the history of the admiralty jurisdiction in England, in common with that of all the courts of that kingdom, except the common law courts, presents an instructive lesson on the necessity of watching the advancement of judicial power, in common with all power inasmuch as it shows in what small beginnings, and by what indirect and covert means, aided by perseverance and ingenuity, originated the mighty structures against which, ultimately, the legislative and judicial power of the country had to exert the full force of their united efforts.

"The vast variety and importance of the subjects which the admiralty had appropriated to itself, will appear in a variety of authors." * * * It will be seen that the admiralty, before the time of Richard II, had arrogated to itself a scope of judicial, legislative, and ministerial power, which withdrew from the trial by jury and placed under the surveillance of the crown, of which the admiralty was only the representative, more than half the jurisprudence, and particularly the commercial jurisprudence of the kingdom.

* * *

"It is obvious, also, from the cases and discussions of that day, that the common law courts were embarrassed by a technical difficulty, arising out of the necessity of laying a venue to every action. As soon as this was removed (and the advocates of the admiralty murmur very much at the supposed absurdity of removing this absurdity), the progress of the common law courts was rapid in wresting from the admiralty every species of contract, leaving them none to act upon, on which they could themselves render complete justice according to the established rights of the parties.

* * *

"But, right or wrong, it is not to be questioned at this day, that the admiralty have lost their jurisdiction over contracts, with the exceptions stated. The most animated advocates of the admiralty do not deny this. They mourn bitterly over its fall, but uniformly acknowledge that they are eulogizing the dead.

* * *

"With regard to Judge Winchester's decision in the case of The Sandwich, it cannot be denied that it is directly in point. But, it is equally true that it appeals to no authority that can sustain it. It is not by an exhibition of learning that decisions are to be tested, but by sound conclusions from unquestionable premises. To obstruct our inquiries by a battery of cases, or learned and remote quotations, often obtain from faith concessions that ought to be yielded only to investigation. I admit that Judge Winchester's decision s character-

ized by learning, but certainly his premises cannot be conceded to him; they are founded in error."

After quoting from Judge Winchester's decision he continues:

"Now, learned as this decision may be, it is obvious that it is but a tissue of errors, since it adopts the civil law as its guide, and the admiralty law, in the time of its most extravagant pretensions, positively denying the authority of the statutes of Richard, and the modifications which they introduced into the law maritime

"I will not show that Judge Winchester is equally unsustained in his other principle, to-wit, that 'on a maritime contract, as a general proposition, the Court of Admiralty has jurisdiction over the person as well as over the ship.'

"I have referred to the celebrated resolutions of 1632, in which, when the admiralty were solemnly gathering up and consecrating, as they thought, the remains of their jurisdiction, this right, is, in express terms, relinquished; to *Sheppard's Abridgment*, in which at a period long subsequent, such is given as the purport and exposition of that document; and I have quoted *Craddock's* case, and *Leigh* and *Burleigh's* case, in which the Court of Admiralty was expressly prohibited from proceeding *in personam* in behalf of material men. I should think here I have a right to demand, if from the whole library of law books—and God knows we have enough of them already, 'camel loads'—a single attempt to proceed *in personam*, upon a contract in the admiralty, except for seamen's wages, since the date of the resolutions of 1862, can be extracted. Adjudged cases cannot be found, because, since the antique cases to which I have referred, the right has been abandoned. Dicta enough can be produced, and some of those very modern.

"Of the case in 2 Gallison, (Judge Story sat with him) I will only remark, that it was a decision in the first circuit, in which the right to proceed *in personam* in the admiralty was asserted, in a suit upon a policy of insurance; and if the *nisi prius* decisions of the judges of this court are of any authority here, it is only necessary to observe, that a contrary decision has been rendered in the sixth circuit. Let them, therefore, fall together; and let the question be tested upon principle and authority, independent of those decisions.

* * *

"I have now said a great deal on this subject, and I could not have said less, and discharged the duty which I feel that I owe to the community. I am fortifying a weak point in the wall of the constitution. Every advance of the admiralty is a victory over the common law; a conquest gained upon the trial by jury. The principles upon which

alone this suit could have been maintained, are equally applicable to one-half the commercial contracts between citizen and citizen. Once establish the rights here claimed, and it may bring back with it all the admiralty usurpations of the fifteenth century. In England there exists a controlling power, but here there is none. Congress has, indeed, given a power to issue prohibitions to a district court, when transcending the limits of the admiralty jurisdiction. But who is to issue a prohibition to us, if we should ever be affected with a partiality for that jurisdiction?"

In the case of Bains v. The James and Catherine, in the district court for the District of Pennsylvania, decided in 1832 (Federal Case No. 756), if found a scathing and forcible opinion written by Mr. Justice Baldwin, in which he does not hesitate to narrow down the whole of the admiralty jurisdiction of the United States to a close approximation with the construction of the English courts. In the course of this opinion Mr. Justice Baldwin had occasion to remark:

"The counsel for the respondent has ably and ingeniously endeav- of wages due the libellant as master of the schooner James and Catherine, by shipping articles on a voyage from Philadelphia to Kingston and back.

* * *

"The counsel for the respondent has ably and ingeiously endeavored to establish the position, that the admiralty has jurisdiction *in personam* over all contracts for materials and provisions furnished, and labour performed in building, repairing, equipping and provisioning ships; in doing which he had entered into a very extensive range of investigation of the jurisdiction of courts of admiralty, a subject on which great contriety of opinion has existed and yet exists among the most learned judges and jurists of this country.

* * *

"The jurisdiction of the admiralty was deemed a jewel of great lustre and value in the diadm or crown of the English king, and was carried to great extent by the lord high admiral and his officers; but however it might be cherished and enlarged by them, in order to extend the king's and their power, and promote their interest, it was odious to the commons of England, who became alarmed at the encroachments upon the jurisdiction of the courts of common law, and called loudly for the redress of the grievance.

* * *

"Such was the audacity of the pretensions of the admiralty, that it claimed to exercise jurisdiction in virtue of the king's patent, in defiance of the acts of parliament; and the complaint against the judges was, that they enforced the supreme law of the kingdom. On

a reference of the complaint by the king to the judges, they met it by acts of parliament, judicial proceedings, and adjudged cases, which exposed and put an end to the audacious claims asserted by the admiralty.

* * *

"In the preamble to the declaration of the rights of the colonies in October, 1774, one of the grievances complained of was, that parliament had, by late acts, 'extended the jurisdiction of courts of admiralty not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.' Among the grievances enumerated in the declaration of independence, is the following: 'for depriving us in many cases of the benefit of trial by jury.' These declarations show that the same spirit which actuated their ancestors in England, descended to the colonists with equal zeal, in favour of the common law, right of trial by jury, the restriction of admiralty jurisdiction to it ancient limits, and against its exercise 'over causes merely arising within the body of a county.' It is not credible that principles, thus consecrated, would be abandoned by the people of the colonies, when they made themselves states, by their declaration of independence, or that they solemnly reversed them when they adopted the constiuion.

* * *

"* * * It is in vain to contend that the seventh amendment will be any efficient guarantee for this right (trial by jury) in suits at common law, if an admiralty jurisdiction exists in the United States, commensurate with what is claimed by the claimant in this case. Its assertion is, in my opinion, a renewal of the contest between legislative power and royal prerogative, the common and the civil law, striving for mastery; the one to secure, the other to take away the trial by jury; and until the authoritative judgment of a higher court shall make it my duty to surrender my judgment to their decree, it will never be sanctioned by me."

In the case of Waring against Clark, decided in the Supreme Court of the United States in 1847, and reported in 5th Howard, page 226, it was flatly decided that the grant of admiralty power to the courts of the United States was not intended to be limited *or to be interpreted by what were cases of admiralty jurisdiction in England when the constitution was adopted*, and a collision between ships within the ebb and flow of the tide (by) *infra corpus comitatus* was within the jurisdiction of the United States courts. This last proposition was vigorously disputed by the dissenting opinions of several of the justices, still reiterating that the limitations of the British admiralty applied to the district courts of the United States.

In 1848 the case of the New Jersey Steam Navigation Co. v. The Merchants Bank of Boston, reported in 6th Howard at page 465, came before the supreme court upon a state of facts which involved the loss of a large amount of treasure shipped on board the steamboat Lexington between Stonington and New York. The long, forcible and eloquent dissenting opinion of Mr. Justice Daniel illustrates with what persistence the champions of the sacred common law jurisdiction still maintained the fray, and contains arguments which do not hesitate to draw the Declaration of Independence and the Protests of the Boston tea parties in as reasons in support of the contention that the framers of the constitution could not have stultified themselves by repudiating the principles for which the War of the Revolution had been fought. The court however maintained the jurisdiction even to the maintenance of a libel *in personam* against the owner of the ship for the breach of contract of carriage.

In 1851 in the somewhat famous case, ordinarily entitled "The Genesee Chief," and reported in 12 Howard (13 L. Ed.), at page 1058, the Supreme Court of the United States finally passed upon the question of the jurisdiction of the United States courts in admiralty over non-tidal waters in the United States. The opinion of Chief Justice Tawney is clear and searching and conclusive upon the mind, and in the course of this opinion the following quotations are of more than passing interest. It should be borne in mind that while this opinion rests in some measure upon an act of Congress, the act of Congress is held to be exclusively dependent upon the third article of the constitution for its support.

"This is a case of collision on Lake Ontario. The libellants were the owners of the schooner Cuba, and the respondents and present appellants the master and owners of the propeller Genesee Chief.

* * *

"The only objection made to this jurisdiction is that there is no tide in the lakes or the waters connecting them; and it is said that the admiralty and maritime jurisdiction, as known and understood in England and this country at the time of the Constitution was adopted, was confined to the ebb and flow of the tide.

* * *

"In England, undoubtedly, the writers upon the subject, and the decisions in its courts of admiralty, always speak of the jurisdiction as confined to tide water. And this definition in England was a sound and reasonable one, because there was no navigable stream in the country beyond the ebb and flow of the tide; nor any place where a port could be established to carry on trade with a foreign nation, and where vessels could enter or depart with cargoes. In England, therefore, tide water and navigable water are synonymous terms

"At the time the Constitution of the United States was adopted and our courts of admiralty went into operation, the definition which had been adopted in England was equally proper here. In the old thirteen States the far greater part of the navigable waters are tide waters, And in the states which were at that period in any degree commercial, and where courts of admiralty were called on to exercise their jurisdiction, every public river was the water to the head of navigation. And, indeed, until the discovery of steamboats, there could be nothing like foreign commerce upon waters with an unchanging current resisting the upward passage. The courts of the United States, therefore, naturally adopted the English mode of defining a public river, and consequently the boundary of admiralty jurisdiction. It measured it by tide water. The description of a public navigable river was substituted in the place of the thing intended to be described. And under the natural influence of presedents and established forms, a definition originally correct was adhered to and acted on, after it had ceased, from a change in circumstances, to be the true description of public waters. It was under the influence of these precedents and this usage, that the case of *The Thomas Jefferson* 10 Wheat., 428, was decided in this court; and the jurisdiction of the courts of admiralty of the United States declared to be limited to the ebb and flow of the tide.

"It is the decision in the case of *The Thomas Jefferson* which mainly embarrasses the court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced that, if we follow it, we follow an erroneous decision into which the court fell, when the great importance of the question as it now presents itself could not be foreseen; and the subject did not therefore receive that deliberate consideration which at this time would have been given to it by the eminent men who presided here when that case was decided. For the decision was made in 1825, when the commerce on the rivers of the west and on the lakes was in its infancy, and of little importance, and but little regard compared with that of the present day."

The case of the Missouri, decided in the district court for the district of New York, in 1869, and reported in Federal cases number 1952, was for the enforcement of a penalty for violation of the revenue laws of the United States. The opinion of Judge Benedict, in this case is an eloqunt illustration of ths fact that with all the previous adjudications the jurisdiction had still to be supported and was not considered at rest.

Benedict, District Judge. "This is a proceeding in rem instituted in behalf of the United States against the steamer "Missouri," to recover the sum of $2.998.00. for which sum it is claimed that this steamer is holden to the United States under the laws thereof.

"The act of July 18, 1866, under which this libel is filed, is an instance of incorporated into the revenue laws that marked feature of the maritime law which treats a ship as a person, and makes her personally responsible for the acts of those who own or control her. Such legislation is but the offspring of that necessity, out of which sprang the rule of the maritime law. It was long ago found necessary in order to regulate the business and conduct of ships, which wander everywhere and are the efficient agents both for good and evil of persons often entirely unknown or impossible to be found, as between man and man, to charge the ship—which is always known and can always be found—not only with the contracts but the torts of her master and her owners.

"I hold the present case to be within the admiralty and maritime jurisdiction conferred by the constitution, and for two reasons.

"One reason—to my own mind entirely satisfactory—is, that it is a proceeding to enforce a lien upon a ship. A ship is never free from liens. From her cradle on the stocks, to her grave in the sand, she is always, to a greater or less degree, encumbered by those charges which attach to her, under the rules of the maritime law. These liens are necessities of her existence and usefulness as a ship. They are to the ship what credit is to the merchant. Without them, she must lie by the wall; by means of them, she plows the sea. A proceeding to enforce any lien upon a ship by her sale—which is the only method of enforcing a lien—must, if injustice is to be avoided, call in question all the liens upon her, and must, accordingly, involve an adjudication upon liens created by the maritime law, and exclusively maritime in their nature. It would seem, therefore, that it might well be held, for this reason, if for no other, that all such proceedings should be taken in that court to which the detemination of maritime questions more especially belongs.

"And all such proceedings should be held to be within the jurisdiction of the admiralty, for the further reason that the proceeding *in rem* of the admiralty is the only proceeding, known to the law, which is competent to determine the rights which are liable to be involved by any attempt to enforce a lien upon a ship.

"An illustration, such as might be presented any day, will serve to show the correctness of this proposition. Suppose, then, the case of a lien upon a ship, to the extent of her value, under this act of 1866, and that the ship proves to have been heavily bottomried abroad, and, on the voyage home, to have sustained a collision, by which a ship, equal to her in value, has been sunk. Of course, upon arrival, she owes a considerable sum to her crew, and her cargo turns out damaged by the disaster. If, in such a case, the lien of the govern-

ment is to be enforced by a suit at law, who is to be the defendant? Do you say, the owners? They have no interest to defend, until they have successfully disputed both the bottomry and the collision demands. If you say, the bond-holder, his interest depends upon the validity of his bond, and the invalidity of the collision demand; and that, in turn, can only be recognized after it appears that the cause of the collision was faulty navigation of the vessel proceeded against; and what, in such a suit, is to become of the sailors, and of the demands of the numerous freighters?

"In such a state of facts—and I have supposed no unreasonable case—a suit at law is inadequate. In all such cases the proceeding *in rem* of the admiralty, to which all the world are parties—a proceeding which is, in some sense, the ship's bankrupt proceeding, whereby she is discharged of all her debts and her value distributed among her creditors—a proceeding, of which the supreme court in the case of The Moses Taylor, say: 'The distinguishing and characteristic feature of a proceeding in admiralty is, that the vessel or thing proceeded against is itself seized, and impleaded defendant, and judged, and sentenced accordingly'—such a proceeding, I say, is a necessity, if injustice is to be avoided. By means of that most sensible and useful of legal proceedings, the conflicting demands of the government of the bond holder, of the owner, of the crew and of the freighters in the case supposed, are all easily adjudicated and disposed of at once—perhaps even the ship meanwhile earning a sum equal to them all, to the advantage of her owners, and the benefit of mankind."

In 1870 the case of the Insurance Co. v. Dunhan, reported in the 11th Wallace, at page 90, brought up for decision the question as to whether or not recovery on a policy of marine insurance was within the admiralty jurisdiction. This was the question decided by Judge Story of the Circuit Court and heretofore commented upon.

The supreme court, in a long, comprehensive, and extensively interesting opinion, goes over the whole field and logically defines the position of the supreme court in accordance with the principles laid down by Justice Story in De Lovio v. Boit. The reading of this case in its entirety constitutes a brief commentary on the whole subject under discussion.

It is impossible, within the length of this paper, to further illustrate the development of the principles under consideraion. It will be readily seen however that the jurisdiction of the United States courts to entertain suits *in rem* against the ship and *in personam* against the owners has been construed along logical and well defined lines which, roughly speaking, may be said to nclude all contractual

rights relating to transactions upon the sea, and to torts occuring upon the sea, and that as to the subject-matter the common law remedy is at all times preserved where the common law is competent to give it, but that the remedy, according to the forms and procedure of the admiralty, is given exclusively into the hands of the courts of the United States.

It is interesting to note in passing that Congress at the last session has extended the lien right which has been enforced by the ditrict courts by virtue of the local state statutes against domestic ships (a domestic ship being defined as one operated and incurring liabilities in the state in which her owner resides), so that the same right now exists by virtue of the laws of the United States against the domestic ship as has heretofore, under the general admiralty law, existed against the foreign ship.

HON. C. W. DORR.

FEDERAL AND STATE CONTROL OF WATERS

INCLUDING FISHERIES

By Charles W. Dorr of the Seattle Bar.

The High Seas.

Under the modern doctrine, which has prevailed for at least a century, the ownership of and the dominion over the high seas is considered common to all nations.

The early English writers strenuously opposed this doctrine and contended for a right of sovereignty on the part of the English Kings to the British seas, but their contentions, in that regard, were not upheld, and gradually gave way to the common ownership theory.

The Three Mile Limit.

A belt or strip of water bordering the shore, which, by common consent, has been fixed at a uniform width of one marine league or three nautical miles from the shore, does not, by right, belong to the nation or state holding title to the contiguous land. The actual title to this three-mile strip of water, and the bed thereunder, like those to the seaward thereof, is common to all nations. But for all practical purposes, the three-mile fringe belongs to the nation owning the contiguous upland. By the law of nations, dominion over the three-mile strip has been ceded to the nation having sovereignty over the adjacent land for the purposes of general safety and protection of the coasts.

The marine league zone theory was originally based upon the fiction that three miles was the distance beyond which a cannon shot could not be sent, an assumed distance at which a nation was supposed to be able to exercise dominion from the shore, and protect itself from invasion.

Although our modern guns have destroyed the theory, the rule remains and appears to have become thoroughly established.

The distance is to be measured seaward from the line of low tide. All tidal lands which are uncovered and covered by the ebb and flow of the tides are within the territorial limits of the state, and belong to its citizens.

Unless the government asserts jurisdiction over the three-mile strip by affirmative legislation, such jurisdiction does not exist, and general statutes are without force therein.

It may now be stated as a universal rule, that, through treaties, statutes and executive orders, the dominion and jurisdiction of the contiguous nation over the three-mile zone is recognized and conceded by all civilized nations, and, with the exceptions hereafter noted, the high seas beyond the three-mile limit from shore are open highways for the common uses of all nations for all purposes, including the right of fishery.

An instance will illustrate the modern trend of international jurisprudence.

By the award under the treaty of arbitration of 1892, between the United States and Great Britain, relating to fur seals in Bering Sea, it was settled that there was no jurisdiction of the United States to prohibit the killing of fur bearing animals in the waters of Bering Sea at a distance greater than three miles from shore. The La Ninfa (C. C. A. 1896), 75 Fed. Rep. 513; The Alexander (C. C. A. 1896), 75 Fed. Rep. 519.

Arms of the Sea.

An extension of jurisdiction beyond the three-mile limit zone proper, has been conceded to cover bays, sounds, inlets, gulfs and some practically enclosed large inland seas, which, because of the indentations of the coast, are situated with the general coast line courses. The lines limiting the jurisdiction in such cases are drawn from headland to headland, instead of following the sinuosities of the shore. In some cases, not only dominion but actual recognized ownership has attached to such inland waters and their beds.

Perhaps no better illustration can be found of this exception to the general rule, than its application to the Straits of San Juan de Fuca, and the contiguous inland waters, including the Gulf of Georgia, all of which are commonly called the Puget Sound.

Under the award of the Emperor of Germany, by virtue of the treaty of May 18th, 1871, between the United States and Great Britain, submitting to arbitration the question of the correct boundary line between the British and United States possessions in these waters, said boundary line was defined as commencing at a point on the 49th parallel on the west side of Point Roberts, and continuing along said parallel westward to the middle of the channel, which separates the continent from Vancouver's Island, thence southward along the center of the Canal de Haro (I am not giving the details of the courses and distances) to the center of the Strait of San Juan de Fuca, thence westward along the center line of said Strait to the Pacific Ocean at a point equidistant between Bonilla Point on Vancouver's Island and Tatoosh Island Light House on the American shore.

This line defines the boundary of the state of Washington, as adopted by the state Constitution (Article XXIV), under the enabling Act of Congress, and was consequently approved by proclamation of the President in admitting the state into the Union in 1889. As the Gulf of Georgia and the Strait of Fuca are each more than ten nautical miles in width, to say nothing of the wider bodies of interior contiguous waters, it can readily be seen that we have greatly exceeded the three-mile limit, not only in jurisdiction, but in actual ownership, as all of said waters lying to the southward and eastward of the International boundary are within the state's territorial limits, under its sovereignty, and are actually owned by the state of Washington.

Extra Territorial Jurisdiction.

The general jurisdiction over the extra territorial three-mile strip and the inland arms of the sea to which jurisdiction has been extended by the comity of nations, is in the abutting states rather than the Federal government.

This was squarely decided by the Supreme Court of the United states. By the 8th section of artile I of the constitution, power is at page 264, Mr. Justice Blatchford, in delivering the opinion of the court, said:

"The extent of the territorial jurisdiction of Massachusetts over the sea adjacent to its coast is that of an independent nation; and except so far as any right of control over this territory has been granted to the United States, this control remains with the State."

This jurisdiction, of course, does not involve the judicial power of the United States in cases of admiralty and maritime jurisdiction, which are excepted, and are not here being considered.

The jurisdiction of the state includes the application and enforcement of its penal statutes, the power to regulate, license and control the fisheries within the three-mile zone, and the enlargements thereof, and the enforcement of all of its laws of a general nature which are applicable, and which might be enforced within its territorial limits proper.

State Ownership and Control.

The states own, by right of their sovereignty, all of the waters, and all the beds thereunder, lying within their territorial limits.

The states likewise own, so far as they are capable of ownership, all of the fish and animals while they are within said state waters. The state's title is absolute. It is, however, subject to a paramount servitude and easement in favor of the Federal government, with respect only to the navigable capacity of all interstate waters, for the

purposes of Federal control and regulation of interstate and foreign commerce and of navigation. These, like all other powers delegated to the general government by the constitution, were grants from the states. By the 8th section of article I of the constitution, power is granted to Congress:

"To regulate commerce with foreign nations and among the several States and with the Indian tribes."

and by section 2, article III, the judicial power of the United States was extended:

"to all cases of admiralty and maritime jurisdiction."

The doctrine has always been maintained by the Supreme Court of the United States, that whenever a conflict arises between a state and the United States as to the regulation of commerce or navigation, the authority of the Federal government is supreme and controlling. Manchester v. Massachusetts, 139 U. S. p. 262.

But these powers have never been understood as authorizing the Federal government to take possession of, regulate or exercise jurisdiction over the fisheries of a state within its borders without the consent of the state, or as a matter of right. The contra doctrine has been repeatedly announced by the Federal Supreme Court and as well by the state courts.

In Martin v. Waddell, 16 Peters (1842) p. 410, Chief Justice Tarey said:

"When the Revolution took place, the people of each state became themselves, sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government."

In one of the early Massachusetts cases, it was said, by Chief Justice Shaw, delivering the opinion of the court:

"That in the distribution of powers between the general and State governments, the right to the fisheries and the power to regulate the fisheries on the coasts and in the tide-waters of the state, were left, by the Constitution of the United States, with the states, subject only to such powers as Congress may justly exercise in the regulation of commerce, foreign and domestic." Dunham v. Lamphere, 3 Gray (Mass.) 268.

These principles were expressly approved by the Supreme Court of the United States in Manchester v. Massachusetts, 139 U. S. p. 258, wherein the power of the State of Massachusetts to regulate and control the fisheries of Buzzard's Bay was at issue, the decision being in favor of the state.

Mr. Justice Blatchford, who wrote the opinion, remarked (p. 262):

"In the case of Stockton v. Baltimore & N. Y. R. Co., 32 Fed. Rep. 9, in the Circuit Court for the District of New Jersey, Mr. Justice Bradley shows clearly that there is no necessary conflict between the right of the state to regulate the fisheries in a given locality and the right of the United States to regulate commerce and navgation in the same locality. He says that, prior to the Revolution, the shore and lands under water of the navigable streams and waters of the Province of New Jersey belonged to the King of Great Britain, and, after the conquest of those lands were held by the state, as they were by the King, in trust for the public uses of navigation and fishery."

In Pollard's Lessee v. Hagan, 3 Howard, p. 230, the following fundamental principles were announced:

"First, the shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively.

"Secondly, the new states have the same rights, sovereignty, and jurisdiction over this subject as the original states."

In McCready v. Virginia, 94 U. S. pp. 394-5, it is said:

"The principle has long been settled in this court, that each state owns the beds of all tide-waters within its jurisdiction unless they have been granted away. Pollard's Lessee v. Hagan, 3 How. 212; Smith v. Maryland, 18 How. 74; Mumford v. Wardwell, 6 Wall. 436; Weber v. Harbor Commissioners, 18 id. 66. In like manner, the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. Martin v. Waddell, 16 Pet. 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide-waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship."

In Smith v. Maryland, 18 Howard, pp. 74-5, Mr. Justice Curtis, in delivering the opinion of the court, said:

"Whatever soil below low-water mark is the subject of exclusive propriety and ownership, belongs to the state on whose maritime border, and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the declaration of independence. Pollard's Lessee v. Hagan, 3 How. 212; Martin v. Waddell, 16 Pet. 367; Den v. The Jersey Co., 15 How. 426.

"But this soil is held by the state, not only subject to, but in some sense in trust for the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shellfish as floating fish. Martin v. Waddell; Den v. Jersey Co.; Confield v. Coryell, 4 Wash. R. 376; Fleet v. Hageman, 14 Wend. 42; Arnold v Munday, 1 Halst. 1; Parker v. Cutler Milldam Corporation, 2 Appleton (Me.) R. 353; Peck v. Lockwood, 5 Day 22; Weston et. al. v. Sampson et. al., 8 Cush. 347. The state holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction of the State over it, and from its duty to preserve unimpaired those public uses for which the soil is held. Vattel b. 1, c. 20, s. 246; Corfield v. Coryell, 4 Wash. R. 376. It has been exercised by many of the States. See Angell on Tide Waters, 154, 156, 170, 192-3."

In Hardin v. Jordan, 140 U. S., p. 382, it was said:

"This right of the States to regulate and control the shores of tide-waters, and the land under them, is the same as that which was exercised by the Crown in England. In this country the same rule has been extended to our great navigable lakes, which are treated as inland seas; and also, in some of the states to navigable rivers, as the Mississippi, the Missouri, the Ohio, and in Pennsylvania, to all the permanent rivers of the State; but it depends on the law of each State to what waters and to what extent this prerogative of the State over the lands under water shall be exercised."

In Illinois Central Railroad v. Illinois, 146 U. S. pp. 434-5, in delivering the opinion of the court, Mr. Justice Feild said:

"The State of Illinois was admitted into the Union in 1818 on an equal footing with the original States in all respects. Such was one of the conditions of the cession from Virginia of the territory northwest of the Ohio river, out of which the State was formed. But the equality prescribed would have existed if it had not been thus stipu-

lated. There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits. The boundaries of the State were prescribed by Congress and accepted by the State in its original Constitution. They are given in the bill. It is sufficient for our purpose to observe that they include within their eastern line all that portion of Lake Michigan lying east of the main land of the State and the middle of the lake south of latitude forty-two degrees and thirty minutes.

"It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide-waters, within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has been often announced by this Court, and is not questioned by counsel of any of the parties. Pollard's Lessee v. Hagan, 3 How. 212; Weber v. Harbor Commissioners, 18 Wall. 57."

The Effect of the Federal Servitude Upon the State's Control.

By reason of the existence of the servitude and easement over the navigable waters in favor of the Federal government, with respect to commerce and navigation, Congress has, from time to time, enacted laws, in aid of the Federal government in the enforcement of its rights, which are jealously guarded by the War Department of the United States.

Such an Act of March 3rd, 1899, prohibits the creation of any obstruction to the navigable capacity of any waters of the United States, not affirmatively authorized by Congress, and as well prevents the building of any wharf, pier, dolphin, boom, weir (fish trap), breakwater, etc., except on plans recommended by the Chief of Engineers and authorized by the Secretary of War.

The practical result of the exercise of their respective jurisdiction by the state by virtue of its ownership and by the Federel government, by virtue of its easement and servitude, is to require the concurrent consent of both powers for the occupancy of the navigable waters with any fixed appliance, such, for instance, as a log boom or fish trap. The state has the power to grant the license to fish, to prescribe the method to be employed, and to define the location to be occupied, but no structure may be lawfully commenced without the consent of the Secretary of War, who, in his discretion,

issues special permits covering definite sites, the occupancy of which will not, in his judgment, interfere with navigation.

In referring to the above mentioned act of Congress, which grants to the Secretary of War discretionary powers in the matter of Federal permits, the United States Supreme Court used the following language in Cummings v. Chicago, 188 U. S. p. 431:

"The effect of that act, reasonably interpreted, is to make the creation of a structure in a navigable river, within the limit of a State, depend upon the concurrent or joint assent of both the National Government and the State Government. The Secretary of War, acting under the authority conferred by Congress, may assent to the erection by private parties of such a structure. Without such assent the structure cannot be erected by them. But under existing legislation, they must, before proceeding under such an authority, obtain also the assent of the State acing by its constituted agencies."

"No conflict need arise under this system of joint jurisdiction. The citizen knows that he must secure the consent of both authorities, and that, without both, neither is effectual. The state collects its license revenues, and regulates the operations of its fisheries, and the general Government consents that the State, through its citizens, may infringe upon the Federal easement, in such instances as will not actually interfere with the paramount use of the waters for navigation.

Federal Interference Should Not Be Permitted In the Control of the State's Fisheries.

At the present moment, the state's rights in the ownership, control and regulation of her fisheries, as we have understood them, to rest in absolute security since the adoption of the Federal Constitution, are being indirectly assailed by the executive branch of our own general government.

The attack comes through the medium of a treaty convention of April 11th, 1908, between the United States and Great Britain, by which it is proposed to wrest from the northern tier of maritime states lying sontiguous to Canada, their border water fisheries and to fransfer the same to the joint control of the United States and Canada, upon the plea of international regulative necessity.

By this treaty, it is not proposed to take from the states the control of their own fisheries, but to actually divide with a foreign power, the jurisdiction thereover, and as well over such of our citizens as may be engaged in fishing in said waters.

I quote from article III of the treaty:

"And it is further agreed that jurisdiction shall be exercised by either government, as well over citizens or subjects of either party ap-

prehended for violation of the regulations in any of its own waters to which said regulations apply, as over its own citizens or subjects found within its own jurisdiction who shall have violated said regulations within the waters of the other party."

I am absolutely and utterly opposed to the principle involved in this International proposition, and I believe it should be resisted by all honorable and lawful means by all the people in all the states with all the power and energy of American manhood.

It is immaterial that the particular states involved in this instance are all maritime border states, lying contiguous to the waters and territory of a foreign nation. If the police power of the United States can be thus extended over the commercial fisheries of the state of Washington, without its consent, that same power may, upon principle, be likewise extended over all the fisheries in all the states of the Union. I hold that this treaty is un-constitutional because it purports to operate upon a subject which has never been delegated to the Federal Government, but which was reserved by the States, viz: the regulation and control of the fisheries within the territorial limits of the states by the exercise of police power.

I am quite conscious of the fact that the views here expressed, against the scope of the treaty making power of the Federal government, are in direct conflict with an opinion of the Attorney General of the United States, rendered in 1898 upon this identical point. (Opinions of Attorneys General, Vol. XXII, p. 214).

I am, however, unable to agree with Mr. Griggs, either in his line of reasoning or in his conclusions upon the law.

The Attorney General prefaces his argument with the following statement:

"The waters of the lakes and rivers which form the boundary between the United States and Canada are upon this side of the boundary line within the territorial jurisdiction of the several riparian states. The regulation of fisheries in navigable waters within the territorial limits of the several States, in the absence of a Federal treaty, is a subject of State rather than of Federal jurisdiction. Congress has the paramount right to regulate navigation in the navigable waters of the United States for the benefit of all the citizens of the Union, but Congress has no authority, in the absence of treaty regulations, to pass laws to regulate or protect fisheries within the territorial jurisdiction of the States. (McCready v. Virginia, 94 U. S., 391; Lawton v. Steele, 152 U. S. 133).

"The question for consideration, therefore, is whether the United States by treaty may deprive the riparian States of the power of control and regulation over the fisheries in the waters within their

respective jurisdictions conterminal with the boundary between the United States and Canada. It is obvious that if by the exercise of the treaty-making power the regulation of this subject is assumed by the Federal Government the respective State governments will be deprived of jurisdiction over that subject in the same waters."

(Opinions of Attorneys General, Vol. XXII, pp. 215-6).

He then proceeds to argue and conclude that, by virtue of its treaty-making power, the Federa. government may deprive the States of the control and regulation of their fisheries. The power of Congress to regulate navigation is not in issue. The question is as to the power of Congress or, more strictly speaking, the authority of the United States government, under its treaty power, to regulate the State fisheries without the state's consent

it would hardly be seriously contended, in the teeth of a hundred years of an unbroken line of American decisions, establishing and upholding the plenary power of the states to regulate and control the fisheries within their borders, that Congress alone could lay hold of these fisheries. In fact, Mr. Griggs expressly states that Congress has no such authority in the absence of treaty regulations, but the argument is advanced to the effect that the Federal geyornment, by virtue of its power to treat and contract with foreign nations, may, by such indirect method, accomplish this anomolous condition. That is to admit that the president, with the consent of the senate, in conjunction with a foreign nation, may take over the state's property through the means of a treay, a thing which could not be done by the senate and the house of representatives acting together, with the approval of the president, in the exercise of the national law making power. To further emphasize the absurdity of the proposition, it is contended that, by eliminating the house of representatives and substituting His Britanric Majesty in the compact, the States' domain may be invaded and their private and personal property sequestered, which could not be done without the aid of the foreign power and with the lower house of Congress exercising its function as a part of the law making power of the Federal government.

I cannot believe that this is the law.

In neither McCready v. Virginia, nor Lawton v. Steele, cited by Mr. Griggs, was the treaty power involved or mentioned. The McGready case depended upon the validity of a state statute of Virginia conferring upon her own citizens the exclusive rights in her oyster fisheries. Mr. Justice Waite, who wrote the opinion, stated the point involved as follows: (94 U. S. p. 394).

"The precise question to be determined in this case is, whether

the State of Virginia can prohibit the citizens of other States from planting oysters in Ware River, a steam in that State where the tide ebbs and flows, when its own citizens have that privilege."

Proceeding with the argument, excerpts of which have heretofore been quoted under another subdivision of this paper, the learned Justice observed: (94 U. S. p. 396).

"The planting of oysters in the soil covered by water owned in common by the people of the State is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purposes of cultivation and profit; and if the State, in the regulation of it public domain, can grant to its own citizens the exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water. And as all concede that a State may grant to one of its citizens the exclusive use of a part of the common property, the conclusion would seem to follow, that it might, by appropriate legislation, confine the use of the whole to its own people alone."

The Lawton case involved the constitutionality of an act of the legislature of the state of New York prohibiting commercial fishing within a certain defined portion of Lake Ontario, and providing for the summary destruction of any fishing gear which might be captured while employed in violation of the fishing restriction. The principal contention was over the right of the state to summarily deal with the nets as a public nuisance, and destroy them, without a judicial hearing. The decision upheld the police power of the state in all respects.

The attorney general rightly asserts that if the regulation of the fisheries is assumed by the Federal government through the exercise of its treaty-making power, that the states will be deprived of their jurisdiction over that subject in the same waters. It is quite true that there can be no concurrent or divided jurisdiction. If the Federal power comes in, the state authority must go out. Here lies the test of the argument. Which authority has the right to control fisheries—the state that holds the title in trust for its citizens, or the Federal government with no title, acting jointly in conjunction with Canada as guardian *ad litem* and conservator to the King?

If it be admitted that the property in the fisheries is with the states, then it must logically follow that the states, by virtue of their sovereignty, have the power and right to use their own property, and that the Federal government has no right to interfere. Such premise and conclusion would hardly be challenged, even in this period of conservation and confusion, if the question was solely between the states and the general government. To hold otherwise, would be to over-

ride and change the whole course of American jurisprudence. Suppose, for instance, a suggestion was submitted to the Congress of the United States to pass an act directing the Department of Commerce and Labor to take over all the fisheries of all the states and operate them, collecting the license revenues therefrom and enforcing all needful regulations, appertaining thereto, who would rise up in Congress to dispute the fundamental principle of law announced by Mr. Justice Waite in the decision of the court in McCready v. Virginia, to the effect that the planting of oysters in the soil covered by water owned in common by the people of the state, is not different in principle from that of planting corn upon dry land held the same way?

But in this treaty with Great Britain, we have an example of an effort to attain an end by indirection, which could not be lawfully secured by direct procedure.

In Geer v. Connecticut, 161 U. S. 519, the questions presented for decision not only involve the ownership by the citizens of the state of the wild game within its borders, but as well the disposition of the trophies of the hunt. The suit arose over a state statute prohibiting the killing of certain wild birds within the state during the open season, for the purpose of transporting them beyond the state. In other words, the state law permitted the killing of the game for domestic commerce within the state, but prohibited the killing of the game for interstate commerce without the state. Mr. Justice White, who delivered the opinion of the court, reviews, with great ability and profound learning, the history of the law in its application to the people with relation to their rights and privileges with respect to animals *ferae naturae*. He says:

"The solution of the question involves a consideration of the nature of the property in game and the authority which the State had a right lawfully to exercise in relation thereto."

He opens the discussion with the statement:

"From the earliest traditions, the right to reduce animals *ferae naturae* to possession, has been subject to the control of the law-giving power."

He then proceeds to review the Roman law, the feudal and ancient civil law of continental Europe, the common law of England, and the Federal and state decisions of the American courts, observing:

"Undoubtedly this attitude of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the States with the separation from the

mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution. * * * *

"Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as disinterested from the public good." Geer v. Connecticut, 161 U. S. pp. 527-8-9.

The decision upheld the authority of the state in the exercise of its police power, to permit the killing of wild game for domestic use for its own people, and to deny them the right, at the same time, to make the game thus lawfully killed, the subject of interstate commerce.

But, quotes the Attorney General.

" 'All treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Opinions of Attorneys General, Vol. XXII, p. 215.

The quotation is incomplete, the following omitted words precede the quoted portion of Article VI of the Constitution, and should be so read:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties," etc.

The Constitution comes first. No treaty can be made except under and as authorized by the Constitution, and if, as was said by Mr. Chief Justice Shaw in Dunham v. Lamphere (supra):

"That in the distribution of powers between the general and state governments, the right to the fisheries and the power to regulate the fisheries on the coasts and in the tide-waters of the State, were left by the Constitution of the United States, with the States," no treaty can lawfully take from the states such right and power so reserved to them. The Constitution itself is first, and above all, the supreme law of the land; the treaty being in conflict therewith, must give way to the superior authority of the organic law which, while reserving the fisheries to the states, created the treaty power—not to over-ride but to operate under and in harmony with the Constitution.

In Foster v. Neilson (1829), 2 Peters (U. S.) p. 314, Mr. Chief Justice Marshall declared that a treaty was to be regarded by the Courts of Justice as equivalent to an act of the Legislature. The courts have repeatedly held that a treaty may be superceded by an act of Congress, and likewise an act of Congress may be superceded by a treaty. The Cherokee Tobacco, 11 Wallace, U. S. p. 616; Fong Yue Ting v. United States, 149 U. S. pp. 720-1; Ward v. Race Horse, 163 U. S. p. 511. A treaty may be made under the Constitution and become a part of the supreme law, but it may not violate or supercede the Constitution.

In Geofroy v. Riggs, 133 U. S., p. 267, it was said:

"The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the states. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the states, or a cession of the portion of the territory of the latter, without its consent."

It was held in Turner v. American Baptist Missionary Union, (1852) 5 McLean 344—24 Fed. Cases, No. 14,251,—that treaties made with Indian tribes have the same dignity and effect as a treaty with a foreign and independent nation.

In Ward v. Race Rorse, 163 U. S. 504, the question arose as to the jurisdiction of the state of Wyoming in the exercise of its police power to enforce the regulations with respect to the killing of wild game by tribal Indians upon unoccupied public lands of the United States, notwithstanding an ancient treaty existing between the United Staes and he Indians made long prior to the admission of Wyoming into the Union; the text of Article IV of the treaty, relied on as giving the Indians the right to kill game within the State of Wyoming in violation of its laws, is as follows: (P. 505).

"But they (the Indians) shall have the right to hunt on the unoccupied lands of the United States, so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

The following facts were admitted: (p. 506).

"1st. That the elk were killed in Uinta County, Wyoming, at a point about one hundred miles from the Fort Hall Indian Reservation, which is situated in the State of Idaho; 2nd, that the killing was in violation of the laws of the State of Wyoming; 3d, that the place where the killing took place was unoccupied public land of the United States, in the sense that the United States was the owner of the fee of the

land; 4th that the place where the elk were killed was in a mountainous region some distance removed from settlements, but was used by the settlers as a range for cattle, and was within election and school districts of the State of Wyoming."

The decision was in favor of the plenary power of the state to regulate the killing of wild game within its borders, and so regardless of the existence of the ancient treaty between the Federal government and the Indians, which was in force at the time the state was admitted, and continued thereafter.

If the state of Wyoming, which was admitted into the Union in 1890 on an equal footing with the original states, as declared by her enabling act, may, by virtue of her state sovereignty and plenary power, disregard an ancient treaty theretofore operating within her borders, with respect to her game, why may not the state of Wash ington, which came in the previous year upon the same equal footing, likewise and for the same reasons refuse to be bound by this newly made treaty which purports to operate within our borders with respect to her fish?

We may concede that the treaty power of the United States is unlimited when operating upon a subject within its scope. But when that power is invoked to deprive a sovereign state of its property rights and patrimony, without its consent, without compensation and without necessity, the effort should be renounced as ultra vires, and as an unjust and unwarranted exercise of the treaty-makig power beyond the lawful limits as prescribed by the Contitution.

The states own the fisheries within their borders. They should be permitted to keep them and control them without Federal inerference or guardianship.

The Work of Some of Our Late Associate Justices of the Supreme Court.

Hon. Geo. Donworth.

Mr. President and Gentlemen of the Association:

It was the intention of Judge Hanford to make some remarks upon this occasion in recognition of the character and services of the three members of the Supreme Court who have deceased during the year. At a late hour last night it developed that Judge Hanford would not be able to be present, and therefore the duty has devolved upon me. I regret that I have not had the time or the opportunity to prepare a suitable address upon this occasion, and yet the subject is one upon which no lawyer should lack for words.

It has been said that the creation of the Supreme Court was the crowning glory of the Constitution of the United States. It was the one feature above all others that made it the grandest governmental frame-work ever constructed and, as Mr. Gladstone said, "the most wonderful document ever produced by the hand of man relating to human government." The only tribunal on earth that has power to set aside the acts of the Executive or the legislature of a nation is the Supreme Court of the United States, and the passing away of three members of that body in a single year is, I take it, an occurrence without precedent. It is an occurrence that has made an impression of profound sorrow upon the American Bar. The three men who by death have been taken away from that august court in the past twelve-month not only constituted three of its most distinguished judges but they also, it may be said, represented that portion of its membership which, in a large measure, connected the last generation with the present.

Chief Justice Fuller took his seat upon the bench in the year 1888 and he was followed, the succeeding year, by Justice Brewer. Chief Justice Fuller succeeded Chief Justice Morrison R. Waite, who had been a distinguished lawyer of Ohio during the generation then passing away, the generation that had reached middle life at the outbreak of the civil war.

When Chief Justice Fuller and Justice Brewer took their seats upon the bench they had as their associates, Samuel F. Miller, Joseph P. Bradley, Samuel Blatchford and Stephen J. Field, four men who had been upon that tribunal during the reconstruction days. During that period, beginning with the close of the Civil War, the questions of national interest that had come before that eminent tribunal were

largely of a political character in the broadest sense of that word. The interpretation of the three recent amendments to the Constitution and the other disputed points to which reconstruction gave rise, formed the most important questions presented to the court for the twenty years or thereabouts after 1865, and the three Judges whose deaths we now mourn constituted in a measure the connecting link between the tribunal of that day and the tribunal of the present,—the connecting link between two sets of questions of a very different character which have invoked the labors and the judgment of that body. The questions that were passed upon during the time of Chief Justice Fuller, Justice Brewer and Justice Peckham involved, largely, controverted propositions connected with the expansion of the national Government. During the time of their service upon the bench. the Government expanded in two distinct ways,—it expanded in area, by annexing subordinate possessions, involving a policy of colonial empire under conditions which could not have been foreseen by the fathers, and it expanded in its own confines by assuming the exercise of certain powers of government that up to that time had at least lain dormant in the national system. The questions growing out of the acquisition of the Philippines, Porto Rico and other outlying colonies were among the most important that were met by the Supreme Court of the United States during the period of the incumbency of these members, and they were solved in a manner not only worthy of great lawyers, but in a manner that exhibited the highest courage, patriotism and intelligence. The expansion that took place in the internal system of Government has been no less marked. Questions concerning the regulating of large corporations, the enlargement of the interstate commerce functions of the Government, the preservation of the public health, and numerous other questions of that character that readily suggest themselves to us all, have required the most careful consideration and the highest exercise of the functions of the lawyer and the judge.

Chief Justice Fuller, I have always taken a pride in feeling, was a native of the same state as myself. He was a grandson of Melville Weston, one of the earliest and one of the best judges of the Supreme Judicial Court of Maine. From the grandfather he inherited a distinguished name and an unusually gifted legal mind. He had also a most kindly nature. His mental temperament combined the practical and the poetical to a degree that is remarkable. His practical abilities were strikingly exemplified in deciding the intricate questions of practice that are continually arising in our federal judicial system, and he brought to bear upon these the fine intellectual acumen which qualified him to analyze and clarify the most complicated problem.

Justice Brewer was a man who was a lawyer by nature born. He began his career as a lawyer at a very early age and was soon elevated to the bench, first as a Judge in the several state courts of Kansas, later being appointed United States Circuit Judge, and later transferred to the Supreme Court of the United States. Of the numerous Associate Justices who have graced that bench there have been few, if any, who had a stronger intellect or a firmer grasp of legal principles. Certainly there has been none who had a more ardent patriotism, a firmer courage or a stronger manliness of character than David J. Brewer.

Justice Peckham came upon the bench considerably later. It was only fifteen years ago that he was appointed. He was long a distinguished lawyer and judge of the State of New York. His claim to fame is based on his work in the New York Court of Appeals as well as in the Supreme Court of the Nation. He was eminently judicial, a splendid type of the American lawyer and judge. He participated in the decision of many of the questions of transcendent importance to which I have referred and contributed his full share to the judicial qualities which have made and now make the Supreme Court of the United States not only in position but also in personnel, the greatest judicial body in the world.

It has been said that a judge achieves at most a dusty immortality; that his opinions are embalmed in books which all too soon become those of a by-gone time; that as the days pass, his memory is recalled only by the occasional reference to those dusty volumes which record the ripe fruits of his genius. Yet it seems to me there could be no more fitting memorial for a lawyer or a judge. It reminds me of the exquisite fitness which we find at times displayed in the selection of a burial place for those great men who have called into being the worlds grandest structures, when the great architect is laid to final rest in the shadow of the splendid arches and beneath the majestic dome that the magic of his genius has created. So the intellect of the judge is embalmed among the books which he so fondly used and which stand as an undying memorial of his justice and his genius.

There have been those upon the Supreme Bench who, as men and lawyers and judges, have achieved exceptional renown,—Jay, Marshall, Taney, Storey, Curtis, Miller and others. It is no rhetorical exuberance, but the sober and just truth, to say that in the three men whose memories we celebrate today, we find characters worthy of the judge is embalmed among the books which he so fondly used bers, men who as lawyers and judges have added new lustre to the American bar and bench.

THE LATE CHIEF JUSTICE FULLER

By Benjamin S. Grosscup.

The recent death of Melville Weston Fuller left vacant the great office of Chief Justice of the United States. For approximately twenty-two years he presided at the court sessions and directed in its deliberations. Before assuming judicial duties, Mr. Fuller was a busy lawyer, whose practice covered a wide range of subjects and whose clientage consisted of busy men occupied in almost the entire field of human industry. His business home while at the bar was in Chicago, that busiest of America's commercial cities, where transactions move at a pace permitting of no lagging on the part of those in charge. A large practice under these environments stimulated a natural nervous energy and formulated in him the habit of promptness and decisiveness.

His contact with complicated affairs gave him an accurate knowledge of business movement, and the motives, ambitions and methods of men in conducting that movement. Natural ability, conscientious devotion to work, and attention to detail, gave him a knowledge of the learning of the law, and the application of that learning as expounded in a wide range of judicial decisions. Thus equipped, he was called to the head of the greatest judicial body in the world.

Owing to the lack of adequate inferior courts prior to the establishment of the Court of Appeals, and a vast increase of litigation attributable to new questions created by the amendments to the Constitution following the war, and new questions attributable to the country's rapidly expanding commerce, the Court was far behind in its work. On his assumption of office he confronted a vast docket. He applied his natural energy and acquired habits of decisive work to the difficult task of bringing the Court up to a contemporaneous disposition of the cases brought before it. This achievement alone would entitle the late Chief Justice to the country's profound gratitude, for justice delayed is often justice denied.

On coming to the bench he was fortunate in his associates. Next on one side sat Samuel Freeman Miller. As Marshall was the expounder of the Constitution, Miller had become the interpreter of its amendments. At his other side sat Stephen Johnson Field, whose virile mind penetrated the depths of every branch of the law and was guided by accurate knowledge of human impulse and action. Next

in order came Joseph P. Bradley, justly esteemed in the front rank of America's jurists. John Marshall Harlan is the only survivor of the great bench of that day. Being still of the living, no comment is permissible. The career on the bench of Stanley Matthews was short, but fulfilled the promise of a brilliant career at the bar. The decisions of Horace Gray exhausted the subject in hand, and are so clear, decisive, and enveloping, that the bar of the country felt itself on safe ground when it found one of them touching a point in issue. Samuel Blatchford, though more technical than his brethern, was a useful member of the Court by reason of his knowledge. Lucius Q. C. Lemar was a man of learning, and having been educated by a Southern career, brought to his office an appreciation of conditions in a vast area of our country, which was of great assistance in preserving the mental balance of the bench.

It was no small task for a man fresh from the bar to take executive direction of a bench thus composed. The fact that the Chief Justice was at once accorded the respect of his associates and was able to command harmonious action, is a tribute both to his intellectual ability and his manhood. His vigor and energy soon became manifest by the shortening docket, without sacrifice in the quality of the work. At the close of the current term of the court, notwithstanding the vast increase of litigation attributable to the industrial activity of recent years, the court is practically up with its work.

Mr. Fuller came to the office of Chief Justice profoundly impressed with the dignity of the body over which he was to preside. He always had little concern for personal display. Always modest and retiring where his personality as a man was concerned, he was exacting for those forms which evidenced the dignity of the court, and never permitted the self-asserting vanity of political officialdom to crowd into places reserved by custom for the administrators of the law. No infraction of etiquette in this respect was allowed to pass unnoticed. He took pride in the luster of his office, and saw to it that there was no intrusion in its place, either in the social or official life of the country. He recognized the value of ceremonial as tending to preserve the popular regard for the authority of the court, and no citizen, either professional or unprofessional, has witnessed the quiet dignity even in so small a respect as the incoming of the Court to its sessions and the outgoing after its sessions, without carrying away a feeling of profound respect and submissiveness.

The death of the Chief Justice did not call forth popular demonstrations such as usually attend the death of a great man in high authority. But this is not surprising when we remember that in this instance the luster of the man was completely enveloped in the greater luster of the office, and the office still lives. When a man more

ambitious for self, a man whose life work even though important was performed in such a way that his personality was always conspicuous, is stricken down, the public experience a shock attended with demonstration and acclaim. But to my mind, there can be no greater tribute to the life of this national character than to have performed his work, the most important under the Constitution, in such a way that his personality is outshone by his deeds.

That Mr. Fuller, on assuming the duties of his office, appreciated the vast power vested in himself and associates, is shown by expression in that great oration delivered by him "In Commemoration of the Inauguration of General Washington," on the occasion of the Centennial celebration of that event. After recounting the power vested by the Constitution in the President and in the Senate in its advisory capacity, and upon the vast power vested in Congress, he says:

"The right to initiate and to pass laws having been lodged in Congress, the balance of power was actually there reposed, and the danger of encroachment would naturally present itself from that quarter.

"And here the Federal judiciary was interposed as a coordinate department, with power to determine when the limitations of the fundamental law were transgressed. Without an exact precedent, the creation of a tribunal possessed of that power was the natural result of the existence of a written constitution; for to leave to the instrumentalities by which governmental power is exercised the determination of boundaries upon it would dispense with them altogether.

* * *

"Scrupulously abstaining from the decision of strictly political questions and from the performance of other than judicial duties; never grasping an ungranted jurisdiction and never shrinking from the exercise of that conferred upon it, it commands the reverence of a law-abiding people."

In the great case involving the income tax law of 1894, the Chief Justice wrote:

"Since the opinion in Marbury v. Madison (1 Cranch 137) was delivered, it has not been doubted that it is within judicial competency, by express provisions of the Constitution or by necessary inference and implication, to determine whether a given law of the United States is or is not made in pursuance of the Constitution, and to hold it valid or void accordingly. 'If,' said Chief Justice Marshall, 'both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.' And

the Chief Justice added that the doctrine 'that courts must close their eyes on the Constitution, and see only the law' 'would subvert the very foundation of all written constitutions.' Necessarily the power to declare a law unconstitutional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question."

For more than a century no one has questioned the power of the court to confine executive authority within the legal limitations provided by the Constitution. The Court has long since settled, and the people have acquiesced in the power of the judicial department to determine when Congress has transgressed its limitations. To the court, therefore, we are entitled to look to protection against any form of usurpation. This supreme tribunal by its own judgments defines its own limitations, and is finally accountable alone to the conscience of the people.

This court, created by the Constitution which sprang from the people for the preservation of the right of self-government and the protection through that government of life, liberty, and the pursuit of happiness, is accountable to no co-ordinate department. Its judgments are reversible alone by the people through the instrumentality of amendment to the Constitution. The Eleventh Amendment is the only approach to popular disapproval and annulment of the court's determination respecting fundamental power.

It is an important task to sit in judgment involving a question of encroachment by the executive. No other judicial body in the world has the power of passing judgment upon the legislative acts of a nation. In all forms of representative government abroad, the legislative power is supreme, except to the extent that it may be subordinate to imperial dictate. In our country there has been committed to a body of men constituting the Supreme Judiciary, the right to determine, the right to judge, and the right to declare the acts of State Legislatures and Congress without greater effect than mere blank parchments. Great as is the power of sitting in judgment concerning the acts of other departments of the government, how vastly greater is the duty of exercising that power within self-defined limitations. The only higher tribunal, the only power which can supervise and correct its judgments, is the power vested in the people as a last resort.

As the executive head of the court, the Chief Justice naturally takes the lead in dealing with questions of jurisdiction, in other words, with questions of power. This was a duty which Mr. Fuller never shirked. The eighty-nine volumes of the published reports of

the court during his chief-justiceship, are replete with decisions written by him involving definition of the relation of the court to other functions of government, both state and national. Throughout there is expressed no hesitation to deal with the subject-matter before the court, using primarily the Constitution as the measure for determination. On the other hand, there is no suggestion of thirst for power. In all his work there breathes a delicate conscience and a lofty patriotism, revealing a man for whom the glitter of mere distinction had no charms.

Our country has been fortunate in its judges. Their judgments have been accepted with general approval and have always been recognized as authority.

Chief Justice Fuller's work has become a living force in the country's progress and an enduring guide in the affairs of mankind.

IN MEMORIUM

JOHN L. NEAGLE.

In the City of Seattle, on October 19, 1909, John L. Neagle, a member of the Seattle Bar, departed this life. H was born near Charlotte, N. C., January 1, 1837. He studied medicine and at the outbreak of the Civil War he was practicing that profession. Although he was opposed to the secession of the Southern States from the Union, yet his environments drew him into the Confederate service. He joined General Lee's army with the Twenty-Third North Carolina volunteers, and entered upon duty as a surgeon, in which position he remained until late in 1863, when he was made Surgeon-General of the medical department of North Carolina, with headquarters at Raleigh. There he remained until the close of the war, when he was ordered to Richmond to take charge of the medical supplies at that point. After discharging this duty, he went into mercantile business and drifted into politics. In 1865 he was elected comptroller of South Carolina. His original Union sympathies led him to accept unreservedly the results of the war; and, in recognition of this attitude on his part, President Grant in 1872 appointed him a pension examiner at the city of Washington. He held this position until 1885, when a change of the party in power led to his resignation. While in the city of Washington he studied law and was admitted to the Bar. He afterwards removed to the city of Omaha and practiced law there until 1890, when he came to Seattle. He entered actively into political affairs in this state and in due course was chosen as Assistant Secretary of the Republican Committee. He practiced law until a few months preceding his death, when ill health compelled his retirement from work. His original medical title remained by him to the end, and he was known to all of us as Doctor Neagle. He was a highly refined and courtly gentleman and was very much liked by everybody who knew him. He was a member of Camp John B. Gordon of the United Confederate Veterans, in which he was always a marked favorite notwithstanding his activity as a republican partisan. His unfailing geniality made him friends on all sides and everybody had a good word for him.

CHARLES S. VOORHEES.

December 26, 1909, in the city of Spokane, Hon. Charles S. Voorhees passed away. He was born in Covington, Indiana, June 4, 1852. In 1873, at the age of twenty-one, he was graduated from the Georgetown University in the city of Washington. He studied law under his

distinguished father, Hon. Daniel W. Voorhees, in Terre Haute, Indiana, and was admitted to the Vigo County Bar in 1875. He entered upon the practice of law in that city. The next year he was appointed assistant cashier to the clerk of the House of Representatives in the city of Washington. In 1882, in company with Hon. John L. Wilson, he removed to Washington Territory and settled in Colfax, where he resumed the practice of law. In that very year he was elected prosecuting attorney of Whitman county and served in that office for two years. In 1884 he was elected delegate from Washington Territory to Congress and was re-elected in 1886. In December, 1889, he removed from Colfax to Spokane, having meanwhile married Miss Fannie B. Vajen, daughter of General John H. Vajen of Indianapolis. In Spokane he was associated in the practice of law successively with James B. Jones, H. M. Stephens, and his brother Rees H. Voorhees. He is survived by his wife and one daughter.

This brief sketch of his life would be quite incomplete without some mention of the part which he took in trying to get the boundaries of the State of Washington enlarged. The following extract from an editorial article in the Seattle Post-Intelligencer of December 28, 1909, succinctly outlines his efforts in this behalf:

"In territorial days the people of Northern Idaho were strongly desirous of becoming attached to Washington; so much so, indeed, that they voted solidly for delegates to congress who would agree to favor the annexation. In 1885, while Mr. Voorhees was a delegate to congress from Washington, he succeeded in getting a bill through both houses annexing the "panhandle" of Idaho, the three northern counties, to Washington. The final passage of the bill was during the closing hours of the session. It reached the president in due time, but he refused to approve it. It died through a "pocket veto," President Cleveland stating that he knew nothing whatever about the merits of the bill, and, therefore, refused to affix his signature to it. He assumed that there must be something wrong about it, because it was a far western measure, and had encountered no opposition in congress. There was great rejoicing in Northern Idaho when news came of the passage of the measure, to be succeeded by bitter disappointment and indignation when, as time rolled on, it was seen that the president did not propose to approve the law. It would have made a decided difference in the history, politically and otherwise, of this state, had that bill been permitted to become a law."

JAMES M'NENY.

In the terrible railroad disaster at Wellington, Washington, on the first of March last when a Great Northern passenger train was crushed to atoms by a snow-slide in the Cascade mountains, James McNeny lost his life. He was a member of the Seattle Bar. He was born at Port Henry, New York, in 1851. After attending public school in his native state, he was graduated at Ottawa College, Canada. He worked his way through that college by teaching English to French students and French to English students. After his graduation he edited a country newspaper at Elizabethtown, New York, and subsequently studied law with Judge Hand. He moved to Red Cloud, Nebraska, in 1878, and there edited a country newspaper for a short time. Later he was admitted to the Bar and thenceforward to the time of his death he practiced law. In 1898 he removed from Red Cloud to Seattle. He was a highly cultured gentleman and a deep student of the law. He was one of the most popular members of the Seattle Bar and his tragic death was extensively mourned.

RICHARD MARSHALL BARNHART.

In the same railroad disaster which cost James McNeny his life, Richard Marshall Barnhart, a member of the Spokane Bar, also fell a victim. He was born September 22, 1869, on a farm near the little town of Decorah, Iowa. He lived on this farm until he had attained the age of six years, when his parents removed to the town of Ridgway, Iowa. Here he remained until 1897, when the family removed to Estherville, Iowa, where he resided with them on a farm until he was twenty years of age. At that age, having picked up such education as the common schools afforded him, he entered the Estherville State Bank as a clerk. He soon became assistant cashier of the institution and held that position for six years, after which he entered up on a collegiate course at Valpariso, Indiana. After spending one year at that college, he returned to Estherville and re-entered the bank for one year, at the expiration of which time he re-entered college at the town of Ada, in Ohio. From this college he went to the University of Michigan at Ann Arbor, where he completed the three-years law course, with honors, in two years. He was graduated in 1890, and shortly thereafter removed to the city of Spokane, which was his home during the remainder of his life. In Spokane he served as law clerk until the election of Hon. Horace Kimball to the office of prosecuting

attorney of Spokane county in 1901. Mr. Barnhart and Hon. Miles Poindexter, now senator in Congress, were appointed by Mr. Kimball as his deputies. In 1904 Mr. Barnhart was elected prosecuting attorney of the county and re-elected in 1906. Mr. Barnhart proved to be a most able, efficient, and upright prosecutor; and the county of Spokane recovered through him thousands of dollars in taxes through the foreclosure of delinquent certificates. He won and retained the respect of the people of Spokane, and his death was a loss to them and to the Bar.

IRA ALLEN TOWN.

In the city of Tacoma, on March 31, 1910, one of the best known practitioners of the Pierce County Bar, Hon. Ira Allen Town, departed this life. He was born in Franklin county, New York, in 1848, and was within a few days of his 62nd birthday when he was stricken with apoplexy at the court house in Tacoma. When sixteen years of age he accompanied his parents to Freeborn county, Minnesota, and later attended the Cedar Valley Seminary at Osage, Iowa, from which he was graduated in 1873 with the degree of Bachelor of Science. He taught school for a year and then entered the law department of the University of Iowa, from which he was graduated in 1875 with the degree of Bachelor of Laws. He engaged in practice in Albert Lea, Minnesota, and upon the incorporation of that town as a city, was elected its chief magistrate, in which position he served for two years. From January, 1880, to January, 1884, he was judge of the probate court in Freeborn county, which position he resigned in order to remove to Tacoma, which he had visited the previous year. He practiced law in Tacoma until the time of his death and was highly esteemed by the Bar and by the general public. He is survived by his wife and two daughters.

FLETCHER M. JEFFERY.

In the city of Seattle, on April 7th, 1910, a member of this Association and of the Seattle Bar, Fletcher Milton Jeffery, passed away in the fiftieth year of his age. He was born in Riley County, State of Kansas, July 1st, 1860. His father was a minister of the Methodist Episcopal church and served a large territory, as was the custom in

the frontier settlements; from which circumstance he was popularly assigned to the respected class known as circuit-riders. Young Fletcher acquired a common school education, and then attended a course of instruction in the Kansas State Agricultural College at Manhattan, from which he was graduated in his twenty-first year. The family soon thereafter moved to California, where he studied law and was admitted to practice. After the common experience of young practitioners, in California as elsewhere, he went to Boston, where he spent a year, with little liking for far-eastern ways and ideas. From Boston he migrated to Cripple Creek, Colorado, where he became mayor of the lively mining town and remained for nine years. Upon the decline of that gold camp he removed to the state of Washington in 1901 and, as might be expected, chose for his home another mining camp—Republic, in Ferry county. Here he held out for two years, during which the fortunes of the camp rapidly waned until it was almost wholly abandoned. He then, for his last move, went to Seattle, and practiced law there until death unexpectedly overtook him, with his fortune yet to be won and a wife, a son and a daughter dependent upon him for support. His membership in the Knights of Pythias, the Yeomen, and the Woodmen of the World constituted the major part of his legacy to those whom he loved and lived for.

JOHN P. JUDSON.

At Colville, on April 12, 1910, John P. Judson died at the age of seventy-two, after having practiced for fifty years at the Bar of the Territory and State of Washington. He was born in Prussia, from which his people emigrated to the United States. He crossed the plains in an ox-cart in 1853 and settled at Steilacoom, in Pierce county. He taught school and became the territorial superintendent of instruction. He served in the legislative assembly of the territory for three terms and was one of the commission which in 1881 codified the laws of the territory and prepared what is generally known at the Bar as the Washington Code of 1881. From Steilacoom he removed to Tacoma, where he had an extensive practice and was regarded as one of the best lawyers at the Bar. In Tacoma he served as city attorney under the administration of A. V. Fawcett, who is again serving that city as its mayor. From Tacoma he removed to Spokane, where he also served as city attorney, and from which city he removed to Colville in Stevens county, where he passed the remainder of his days. He became president of the Stevens county Bar Association. At the time of his death he had practiced law for a

longer continuous time in Washington than any other member of the Bar. He is survived by his wife and four daughters.

JOHN W. ROSE.

At Lynden, in Whatcom County, on April 23, 1819, John W. Rose, a member of the Bab of that county, passed to his eternal reward. He was born in the State of Indiana on May 13, 1857. He was admitted to the Bar in his native State and soon thereafter removed to St. John's and afterwards to Hutchinson, in the State of Kansas, in which towns he practiced his profession until the year 1902, when he came to the State of Washington and entered into law partnership in the City of Whatcom (now Bellingham) with Mr. O. P. Brown, who is a member of our association. After his death, his brethren of the Bar Association of Whatcom County adopted this excellent encomium upon his character:

"Born in Indiana, he there grew to manhood and was admitted to the Bar. After several years of successful practice in his native state, he moved to Kansas and continued the practice at St. John and afterward at Hutchinson. He came from the latter place to Bellingham in 1902, in the prime of years, and endowed with that seasoned maturity which experience ripens; and soon overcoming the usual perplexities of a new jurisdiction he was accorded the merited distinction of high rank among his fellows and in the estimation of the community. Both in ability and character, he was an honor to his profession. Proficient in the deduction of legal principles, quick in comprehension of essential relations in the tangles of law or of evidence, resourceful in argument, dominant in will, and possessed of a memory which served him best when needed most, his abilities were an accession to the legal attainments and standing of the local Bar; while the zeal of the student and the enthusiasm of the advocate found new encouragement and example in his unfailing industry and aggressive earnestness in behalf of his clients. Attending these qualities, which contributed to his success as a lawyer, were the kindly attribute of the heart which made him respected and beloved as a man. Honest in motive, sincere in purpose, sympathetic in impulse, he won the respect of his temporary antagonists in the trial of causes, the gratitude of many unfortunate and poor among his acquaintances, and the abiding personal confidence of his clients and of the Bench.

"Now that he has departed hence and his place among us becomes a cherished memory, we would thus give some permanent expression of our foregoing estimate and appreciation of his character and influence."

JAMES ALVIS WILLIAMSON.

In the City of Tacoma on May 1, 1910, former Superior Judge James Alvis Williamson died, after an illness varying in degree during the preceding nine years. He was born on a plantation in Caswell County, North Carolina, February 1, 1846, and was, therefore, to a day, 64 years and three months old. He came of distinguished lineage, representing some of the best blood of England, Ireland and Scotland. His mother was Mary Lee, of the famous Virginia family of that name; his father was Swift Williamson, an immediate descendant of Hugh Williamson, a member of the continental congress and one of the signers of the constitution of the United States. On both sides of the family they were rich planters and typical southern gentlemen.

The Judge's schooling was interrupted in 1863 by the imperative demands of the Civil War, and at the age of 17 he folded up his books and shouldered a musket at Winston, in his native commonwealth. He was mustered into duty as a member of Company B, first battalion, North Carolina sharpshooters, and served to the close of the war in April, 1865. The family fortunes had meanwhile been swept away, and young Williamson, early in his 20th year, had to enter upon other battles—the civic struggle for subsistence and distinction. He resolved to become a lawyer and taught school as the readiest means of getting money enough for the purpose. The South was impoverished, the salary was meager, and it took him six years to reach the goal of his ambition, for he was not admitted to practice until 1871, which occurred in Winston, where he had enlisted eight years previously.

He was so well prepared for his new duties that five years later he was elected a judge of the criminal court. His kindness of heart made this position distasteful to him and he relinquished it. He was afterwards elected to the state senate to represent Davie and Rowan counties. His uprightness of character, eloquence of speech and geniality of manner singled him out for further honors, and he came very near being nominated for congress, notwithstanding his youth and the total absence of wealth. He was devoted to his profession and not inclined to pursue a political career, but his attractive qualities had already made him a state personage and one of the most promising possibilities for the governorship.

In 1884 he sought in Raleigh, the capital of the state, a wider field for law practice, and there he remained until 1888, when he came to Tacoma. In this city he was successively associated in practice with Judge C. M. Easterday, now on the superior bench, and with John A.

Parker. In 1894 he was elected a member of the school board of Tacoma.

In 1896 the democrats, Silver republicans and populists formed throughout this state a fusion party. In Pierce county the fusionists nominated Thomas Carroll, James A. Williamson and W. H. H. Kean for the superior banch, and they were all elected by large majorities. Carroll had fought in the Civil War on the Union side, as Williamson had on the Confederate, and Kean was a civilian, too young to participate in the struggle, and was the representative of th populists on the ticket.

Among Judge Williamson's warmest friends and supporters were the veterans of the Union army. He had already become an invited and welcome guest at all their social festivities, and his happy speeches were looked forward to as pleasing features. He was remarkably free from all traces of sectional and partisan bias or bitterness. A stranger listening to his hearty indorsement of many republican measures and his high opinion of republican statesmen would at once infer that he was a strong republican partisan; but this was only one of the manifestations of his fair-mindedness on all subjects. He steadfastly refused to look at the evil in men and was always able to see their virtues and merits in abundance. This quality of mind served him in good stead on the bench and endeared him to lawyer sand laymen alike.

In social life he was a loving husband, a devoted father, a warm-hearted friend, a generous opponent and a public-spirited citizen. He was a fine type of the American gentleman. He saw good in everything and was constitutionally an optimist. Nobody could be his enemy. He had, in exceptional unison, the qualities which win the hearts of all classes. He was a widely-read man and a deep student of the law, which to him was the rule and guide of all just living. He was tender and considerate of the feeling of everybody and blind to all faults.

Upon his retirement from the bench in 1901, Judge Williamson resumed the practice of law, in association with his son, George G. Williamson; but his health gradually gave way and for some years he was quite an invalid.

Judge Williamson was married twice and is survived by his second wife; three sons, George G., Thomas and Herndon, all of Tacoma, and five daughters, Mrs. John J. Miller of North Yakima, Mrs. Ralph Krows of Seattle, Mrs. Orno Strong, Mrs. E. R. Ray and Miss Chinita Williamson, all of Tacoma.

JOHN H. McGRAW.

In Seattle, on June 23rd, 1910, John Harte McGraw, after a lingering illness, passed away. He was born at Barker Plantation, Penobscot County, Maine, October 4, 1850. When a little more than two years old his father was drowned in the Penobscot river, and his mother was left with three small children, and, as he often expressed it, "poverty in abundance." At the age of fourteen he entered upon his independent career, with a scant education acquired at an attendance of a few terms in a country school. At seventeen he was employed as a clerk in a general merchandise store, where he remained for three years. October 12, 1874, he married Miss May L. Kelley. He and a brother started a little grocery business, which was wound up in 1875 as a result of general depression caused by the failure, in 1873, of Jay Cooke & Co., and the resultant bankruptcy of the Northern Pacific R. R. Company, which precipitated a general financial panic that lasted for several years. In 1876 young McGraw started for San Francico and worked as a horse-car driver in that city. December 28th of that year he arrived in Seattle and got employment as a clerk in a hotel. The next year he got a lease of a small hotel, which he conducted until it was destroyed by fire in 1878. He then obtained a position on the police force of Seattle, consisting of four men. He served one year in this capacity, and in July, 1879, was elected City Marshal on a popular vote, and chosen by the City Council as Chief of Police. He held these positions until February, 1882, when he was chosen as Sheriff of King County to fill an unexpired term. In November of that year he was elected Sheriff and re-elected in 1884. During his incumbency of the Sheriff's office he studied law and was admitted to the Bar. In March, 1887, he joined former Chief Justice Roger S. Greene and the present United States District Judge, C. H. Hanford, in law partnership. Later they took in Joseph F. McNaugh, and the firm became Greene, Hanford, McNaught & McGraw. He continued two years in practice. In 1888 he was prevailed upon to accept the nomination for Sheriff and was elected. He declined a re-election in 1890 and became President of the First National Bank of Seattle. He had already become a foremost figure in the politics of the State and was regarded as the Republican Warwick. His generalship in politics was marked by ability, keenness and resourcefulness, accompanied by singular frankness and openness in his methods; so much so that he was greatly admired and respected by his leading opponents. In 1892 he was elected Governor of the State. His term of office was full of trouble, for the great financial panic of 1893 demoralized politics as well as business. He resolutely opposed all measures tending to

weaken the credit of the State or interfering with the just rights of creditors; and he remorselessly vetoed appropriations which he considered in excess of the State's resources. At the end of his term in 1897, largely in consequence of his incumbency of the Governorship, his personal affairs were in bad condition. In July of that year the gold ship "Portland" arrived in Seattle with news of the rich gold discoveries on the Yukon and its tributaries in and about Dawson. Governor McGraw started for the new Eldorado, but did not reach his goal. He stopped midway on the Yukon river and went to work digging for gold. Returning after two years of hard labor he had $20,020.00. Taking out the $20, he counted the $20,00 to Harold Preston and said: "Harold, I'll make this $20.00 last until I am able to get more, but I want you to pay my creditors." He carried out his resolution. He entered into the real estate and insurance business and in a short time was able to pay his indebtedness, amounting to about $100,000. His business prospered, and he was, at the time of his death, a relatively rich man.

Governor McGraw was a man of lofty principles and of unswerving integrity. Notwithstanding the meagerness of his early education, he became a very well informed-man by the reading or histories and the study of the best authors. In the city of Seattle there was a general sentiment that he must be placed at the head of every public enterprise, and he had much difficulty in resisting importunities in this direction. He served as President of the Chamber of Commerce for four years and spent much time in the City of Washington urging immediate consideration of measures for the benefit of Alaska. His wife died about three years ahead of him. He is survived by a son, Mark Thomas McGraw, now a Deputy United States Marshal, and by a daughter, Kate Edna, wife of Fred Hudson Baxter, of Seattle. Although Governor McGraw did not remain long at the practice of law, he was well grounded in its principles and had sound judgment on legal propositions. His death was mourned not only throughout the State of Washington, but also by leading men in all parts of the United States, including the President himself.

CHARLES S. WILEY.

In the waters of a creek emptying into Jervis Inlet, British Columbia, on July 11, 1910, Charles S. Wiley, of Seattle, and his wife were drowned by the capsizing of a rowboat in which they were exploring the creek. His wife's body was recovered, but his own

seems to be lost forever. Mr. Wiley was a respected member of the Seattle Bar. He was a native of Charleston, Illinois, where he practiced law until 1901, when he removed to Seattle; and he was about fourty-five years old when he died. He engaged in practice in Seattle, and was head of the firm of Wiley, Herr & Bayley. In 1906 he joined another member of the Bar, Mr. William H. Lewis, in the formation of the Lewis Construction Company, and of Lewis & Wiley, Inc., which did extensive work in the regrading of Seattle's hilly streets. To the business of these companies Mr. Wiley devoted most of his time, and he earned quite a fortune. He was interested in several other corporations, and was on the high road to great wealth. He had made a specialty of corporation law in Illinois and had served as attorney for the Big Four Railway Company. His fine qualities are well summarized in this tribute to his memory from the representatives of the Abstract and Title Insurance Companies of Seattle:

"Through our intercouse with him as a business associate we learned to admire him for his good judgment, wise counsel and strict integrity, and as a man of the highest type we have been proud to know and have him for a friend. Mr. Wiley could always be depended on for clean-cut, fair-minded and conscientious advice in all the complex questions and relations that are continually arising in business life.

"We feel that the community has lost a noble, upright citizen, the business world a wise counselor, and we a trusted associate and true friend, and we desire to entend, on behalf of the corporations which we represent, and for ourselves individually, our heartfelt sympathy in this hour of affliction."

CONCLUSION.

As to each and all of these departed brethren, much more might with propriety be set forth in this Report; but it has already attained more than the ordinary length, and the Committee feels obliged to content itself with these bare outlines of their honorable careers. In their daily walk and conversation our friends and brothers maintained and exemplified the high standards and ideals of our Profession, and we sadly lay upon their tombs the heartfelt tribute of our regard, esteem and affection.

Respectfully submitted,

JOHN ARTHUR,

Chairman Committee on Obituaries.

BAR ASSOCIATIONS

Washington State Bar Association—C. W. Howard, Bellingham, president; C. Will Shaffer, Olympia, secretary.

Adams County Bar Association—John Truax, Ritzville, secretary.

Chelan County Bar Association—Ira Thomas, Wenatchee, president; Fred Reeves, Wenatchee, secretary.

Chehalis County Bar Association—C. W. Hodgdon, Aberdeen, president; W. W. Boner, Aberdeen, secretary.

Cowlitz County Bar Association—Homer Kirby, Kalama, president; Percy P. Brush, Kalama, secretary.

Jefferson County Bar Association—A. R. Coleman, Port Townsend, president; U. D. Gnagey, Port Townsend, secretary.

King County Bar Association—Orange Jacobs, Seattle, president; John Arthur, Seattle, secretary.

Kittitas County Bar Association—Austin Mires, Ellensburg, president; Chet Hovey, Ellensburg, secretary.

Lewis County Bar Association—David Stewart, Chehalis, president; C. E. Forney, Chehalis, secretary.

Lincoln County Bar Association—C. H. Neal, Davenport, president; C. A. Pettijohn, Davenport, secretary.

Okanogan County Bar Association—Ernest Peck, Oroville, president.

Pierce County Bar Asociation—Theodore L. Stiles, Tacoma, president; O. G. Ellis, Tacoma, secretary.

Seattle Bar Association (King County)—H. H. A. Hastings, Seattle, president; Loren Grinstead, Seattle, secretary.

Skagit County Bar Association—J. C. Waugh, Mt. Vernon, president; Dave Hammack, Mt. Vernon, secretary.

Snohomish County Bar Association—J. Y. Kennedy, Everett, president; Percy Gardiner, Everett, secretary.

Spokane Bar Association (Spokane County)—Frank T. Post, Spokane, president; W. H. Winfree, Spokane, secretary.

Stevens County Bar Association—W. H. Jackson, Colville, president; Howard W. Stull, Colville, secretary.

Bar Association of Spokane County—L. B. Nash, Spokane, president; H. M. Brooks, secretary.

Thurston County Bar Association—Chas. D. King, Olympia, president; H. L. Parr, Olympia, secretary.

Walla Walla County Bar Association—Francis A. Garrecht, Walla Walla, president; John W. Brooks, Walla Walla, secretary.

Whatcom County Bar Association—A. M. Hadley, Bellingham, president; A. L. Black, Jr., Bellingham, secretary.

Whitman County Bar Association—J. T. Brown, Colfax, president; H. M. Love, Colfax, secretary.

Yakima County Bar Association—Ira P. Englehart, North Yakima, president; Thomas E. Grady, North Yakima, secretary.

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HON. W. T. DOVELL

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Washington State Bar Association

HELD IN THE CITY OF

SPOKANE, WASHINGTON

July 27, 28 and 29, 1911

Twenty-Third Annual Convention

OFFICIAL REPORTER
O. C. GASTON
EVERETT, WASHINGTON

OLYMPIA, WASHINGTON
1912
BLANKENSHIP-LEE PRINTING COMPANY

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Committee on Delays in Judicial Proceedure

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PROCEEDINGS

Opening Session, Thursday Morning, July 27, 1911, Masonic Temple, Spokane, Wash.

President Howard—Gentlemen of the Washington State Bar Association, you will please come to order. The first order of business on the program is the Address of Welcome, by the Honorable Lester P. Edge, President of the Spokane Bar Association.

Mr. Edge—Mr. President and Members of the State Bar Association: It is my agreeable privilege today to extend to you most cordial and sincere greeting. The citizens of our city, particularly the members of its Bar, esteem it an unusual honor to have assembled in its midst such a distinguished and representative gathering of not only the citizens of our state, but of the entire Northwest. Fortunate indeed are we that we may have with us sitting in deliberate assemblage citizens representing, as you do, the higher and broader thought of the people, and that we may have at first hand the fruits of your labors and the benefits of your deliberations.

We greet you as representing the highest ideals of a great profession that throughout the history of the English speaking people, has always stood as the protector of our civil rights and the advocate of orderly and constitutional government. We are pleased to welcome you because you have come not with any mercenary or selfish purpose. You have laid aside your duties on the bench and at the bar to come here and consult for the common good; that your combined wisdom may evolve remedies for existing evils and devise methods for the

more expeditious and orderly administration of the law. This is indeed commendable. In fact it is necessary. We are almost daily confronted with the spectacle of witnessing assemblages of our citizens unlearned in the law, unacquainted with public affairs or the statutes in force, proposing amendments to our constitution and drafting radical and comprehensive legislation. Too frequently they force the adoption of these proposals as the law of the land.

Occurrences of this character remind us that it is to organizations such as ours that the people should look for intelligent suggestions as to the way the difficulties should be met. They may, perhaps, remind us that we should at times disregard precedent if it becomes unwieldy or unreasonable, with the same spirit of willingness with which we would discard the antique, the obsolete or cumbersome in matters of every day life. We are reminded we must either progress or recede, but we should keep abreast of the advancement of other lines, to the end that the administration of law be as reasonable and simple as possible. If these matters do not receive our serious consideration, they may receive it from other and less capable organizations, and the resulting confusion may, with some show of reason, be chargeable to the profession to which we belong.

We are convinced that your sessions here will be of material assistance to the jurisprudence of the state, and that some lasting good will come to the profession as a result of your deliberations, and that ideas and theories brought forth here may have such force as to enable them to be of practical use in our affairs.

It has been some years since you have honored our city in this manner, and we deeply appreciate the distinction bestowed. We are glad to have you with us, and we hope your stay will be as agreeable to you as it is to those who have the honor to be your hosts. (Applause).

Mr. President—The response will be made by Judge Fred V. Brown, of Seattle.

Mr. Brown—Mr. President, and members of the Spokane Bar: I obtained the honor of being selected to respond to this address of welcome by coming over here Monday and staying here nearly a week, and being here to greet the Secretary when he arrived and selected the member to respond to this address. I will try to show my appreciation of the honor by not doing as is so often done—talking a perfectly good welcome to death.

On behalf of the members of the State Bar Association, I wish to return most sincere and hearty thanks to the brethren of the Spokane Bar for the welcome that you have given us and the very complete and hospitable arrangements that you have made for our meeting. These are a guaranty not only of successful business sessions of the Association but a guaranty also of a great deal of pleasure during the days that shall pass while we are in session.

We have come here not only for the purpose of pleasure but to seriously deliberate over many matters of interest to the profession. The presence of the Spokane Bar is a guaranty that our deliberations will be attended by wise counsel and that our conclusions will be based upon sound judgment. Serious questions confront the bar of the State of Washington, as indeed they do the entire bar of the country. The standing and dignity of the profession of law is threatened from without and from within; threatened from within by unworthy members who seek to attain success rather than honor and standing and learning; dangers from without by appeals to the prejudices and suspicions of the ignorant and unlearned. The standing of our institutions, the courts, are likewise threatened from within and without. They are threatened from within by unworthy members of the bench who prefer to gain the plaudits of the crowd rather than the tamer honors

attendant upon learning and the careful and conscientious discharge of duties as they are dictated by the law.

The matter that we have to deliberate upon is the successful manner in which to meet these dangerous tendencies, and I am sure that I voice the sentiment of all the members of the State Bar Association when I say to our brethren of the Spokane Bar that their high standing as lawyers, with the ability that they have shown in the contests where we have met them when, upon all occasions, they have shown themselves foemen worthy of our very best efforts, will be valuable assistance to us in our deliberations.

We are glad to come to the City of Spokane for, while we take pride in our own cities, we all look upon Spokane as the gem of the inter-mountain country, as well as the metropolis of Idaho. (Laughter). We take a just pride in your progress. We desire to congratulate you, at the opening of this convention, on your achievement in having settled the old problem of civic administration and, speaking entirely out of my official character and outside of my retainer, I congratulate the city upon its recent great victory over the cities of Seattle, Tacoma and Portland. (Referring to the decision of the Interstate Commerce Commission in the Spokane Rate case just announced. (Laughter). Now, when you shall have met and grappled with and passed upon the hobble-skirt question, which is now, I understand, prominently before the community, you will have attained a very high standard among the cities of the Northwest.

We like the beauties of Spokane, the beauties of your buildings, your homes, the surrounding mountains, lakes and valleys. We like your climate and we like to be here, and that, I take it, is why the Bar Association of the State of Washington has voted unanimously to be here at this time. While we yield an admiration to your beautiful city, we will not sur-

render our loyalty to our own cities, for we well know, with the poet:

"There is a land of every land the pride,
Beloved by Heaven o'er all the world beside;
Where brighter suns dispense serener light,
And milder moons emparadise the night.

"And Man! unchanging man, in every varying clime,
Through all the ages of revolving time,
Deems his own land, of every land the pride,
Beloved by Heaven o'er all the world beside."

Subject to that sentiment, I know we will join in most hearty admiration and respect for your beautiful city and thank you for your kind welcome. (Applause).

Mr. President—We will now listen to the report of the Secretary.

SECRETARY'S REPORT

Olympia, Wash., July 1, 1911.

To the Washington State Bar Association:

As Secretary, I hereby submit my report for the period commencing July 1, 1910 and ending June 30, 1911.

The membership as per last report was		428
New members admitted last meeting	82	
Total		510
Died during year	5	
Withdrawn	5	10
Membership to date		500
Under Article V. of the By-Laws, members more than two years in arrears for dues are liable to suspension. Members more than two years in arrears	56	

FINANCIAL STATEMENT

Collections from dues since last report	$910.00

Expenses of Office:

Aug. 1, 1910, Expenses incident to meeting—

Telegraphing and phoning, July, 1910	$ 14.20	
Incidental expenses of meeting	17.25	
Stenographic report and per diem of reporter, 50% regular fees	24.25	
Postage	25.00	
Printing circulars	9.50	
Printing envelopes and letterheads	9.50	
Jan. 1, 1911—		
Clerk assistance	30.00	
Postage	12.00	
June 3, 1911—		
For proof reading and clerical assistance	30.00	
Printing proceedings, 1910	299.90	
Photo for book	1.00	
Printing for circular	6.00	
1500 Clasp envelopes	17.50	
Postage	60.00	
Telephoning and telegraph	9.00	
1000 letterheads	4.25	
1000 envelopes	4.25	
Incidental expenses of Secretary for year	69.40	$643.10
Transmitted to Treasurer, June 30		$267.00
		$910.00

Mr. President—We will now listen to the report of the Treasurer.

Mr. Secretary—Mr. President, the Treasurer has handed me his report to read, and it is as follows:

REPORT OF TREASURER

Olympia, Wash., July 1, 1911

Amount on hand last report	$314.91	
Received from Secretary	910.00	
Total		$1,224.91
Paid warrant No. 35		$ 643.00
Balance on hand July 1, 1911		$ 581.91

ARTHUR REMINGTON, Treasurer.

Mr. President—Gentlemen, you have listened to the report of the Secretary. What will you do with it? Hearing no

objection, the report will stand as approved, as also will the report of the treasurer.

We will now listen to the report of the Committee on Membership, Mr. Dewart, chairman.

Mr. Dewart—Mr. President, your Committee on Membership begs leave to report:

Spokane, Wash., July 26, 1911.

To the President of the Washington State Bar Association:

Your Committee on Membership begs leave to report that it has, during the interim of the meetings of this Association, approved for membership in this Association the names herewith submitted, pursuant to Section Four of Article Three of the constitution.

Respectfully submitted,

F. W. DEWART, Chairman,
HOWARD HATHAWAY,
FRED PARKER,
R. L. McCROSKY,
M. P. HURD,
DONALD McMASTER,
RICHARD W. NUZUM,
FRANK REEVES,
EVERETT SMITH,
Committee on Membership.

(For new members see Membership, Supra).

Mr. President—Unless there is request made to vote on any one proposed member separately, the list will be considered adopted by the Association. Hearing no objection, it is so ordered.

The next order of business on the program is the address of the President. Before proceeding to the formal delivery of the same, however, I take this opportunity of congratulating the Association on being permitted to meet in this beautiful city of Spokane. It was my pleasure to attend the banquet given by the Spokane Bar Association in honor of Judge Rudkin in March last, and from the treatment then accorded, as well as from an inspection of the program before me, I feel

sure that this will prove to be one of the most enjoyable meetings of the Association. I trust that your deliberations will be harmonious and profitable and, at the same time, that they will be dispatched with promptness, in order that we may avail ourselves of the hospitality and good time which the local Association has provided for our entertainment. The President then delivered his address. (Prolonged applause). (For address see Appendix).

Mr. President—I am requested to announce that the addresses scheduled on the program today are of general interest to the public and the public is welcome and invited to attend. We will now take a recess until the hour of two o'clock.

Afternoon Session, 2 O'Clock P. M.

Mr. President—Gentlemen, the Association will please come to order. First on the program for this afternoon is the report of the Committee on Amendment of Law, Hon. Will G. Graves, of Spokane, chairman.

Mr. Graves—Mr. President:

The Washington State Bar Association:

It has been impossible to secure a meeting of the committee on Amendment of Law, or even to obtain expressions of opinion from the members of the committee, with the exception of Mr. Frost. This report must therefore be considered not as a report of the committee, but as an expression of the individual opinions of a minority of its membership.

I.

Mr. Frost recommends that, if amendments are to be fathered by the Association, there be proposed a change in the present fee system; that the paintiff be required to pay a fee of ten dollars upon filing the complaint, and each defendant appearing separately be required to pay a fee of five dollars upon entering his appearance and that no other fee, save the jury fee in cases triable to a jury, shall be exacted. Under the present system, judgments are frequently

not filed, owing to the parsimony of the client or the unscrupulousness of the lawyer, and complications in domestic and property relations may, and frequently do, arise.

II.

Mr. Frost and the chairman unite in according to the State of Washington the palm as the maddest commonwealth in a legislation mad nation, and recommend that inasmuch as the Association can do little or nothing to direct the tide, whatsoever influence it possesses should be exerted to discourage the legislation habit rather than to stimulate it by the suggestion of measures which while well enough, mayhap even meritorious, are not essential to the well being of the state.

III.

In making the foregoing suggestion, the chairman does not wish to be understood to express the idea that amendments to our present laws are not desirable. Many amendments are desirable; too many to be discovered by a cursory survey of the laws or treated in the report of such a committee as this. But attempted sporadic amendment is not only unwise but is futile. Many members of the Association have had legislative experience, and know how difficult it is to put through any important measure, no matter how unexceptionable it may be. There can be no thorough renovation of our laws, the need of which is felt by the practicing lawyer every day, unless a commission be appointed, either to deal with the whole subject, or with the more important branches, such as the probate, community property, and practice acts. To suggest here a change and there an alteration, to recommend the abolition of this trifling provision and the insertion of that provision equally immaterial, is for the Association to stultify itself. Perchance it may, if an earnest and united effort is made, procure the adoption of an act providing for a commission to amend the laws with such compensation as will render it possible for fit persons to give their time to it, and procure the Governor to appoint fit persons to act upon it. A consistent body of laws, having the prestige of such sponsorship, would undoubtedly be enacted. It seems useless to waste time with the discussion of any less elaborate programme looking to the amendment of our laws.

Respectfully submitted,

WILL G. GRAVES, Chairman.

Mr. Secretary—Mr. President, I move that the report of

the committee be adopted and that it be referred to the new committee having charge of that subject.

The motion received a second and was carried.

Mr. Richard Saxe Jones—Mr. President, I do not know that I owe an apology to Mr. Graves and the committee, but I submitted to the Committee on Legislation a proposed bill providing for a code commission for the revision of the code, making it a permanent commission and providing for a revision of it from time to time. I think our Secretary was on that committee. I may have submitted it to the wrong committee. I did not know that the matter was going to be taken up by Mr. Graves' committee.

Mr. President—The report of the Committee on Uniform State Laws, Hon. B. S. Grosscup, chairman.

Mr. Grosscup—The Secretary has the report, Mr. President, and he will read it.

To the Honorable President, and the Members of the Washington State Bar Association.

Your Committee on Uniform State Laws, beg to submit the following report:

No substantial progress has been made since the last meeting of this Association, in the direction of unification of state statutes. The initiative and referendum method of legislation affords little promise of obliterating state lines from the geography of our statutory law. There can be no argument about the benefit to business generally of uniform laws governing commercial transactions and the transfer of property. Shipping receipts, ware-house receipts, conditional sale contracts, deeds and mortgages, and requisites of their acknowledgement, and other similar matters of form entering into the substance of business law, ought to be uniform throughout the country.

Laws affecting the social relation, such as marriage and divorce, cannot in the nature of things, be made uniform in a country as large as the United States, with the wide diversity of ideas concerning the nature of marriage, existing in different parts of the coun-

try. But a marriage solemnized and a divorce granted, according to the laws of any state in the Union, ought to be good in every state. If the advocates of uniform law on the subject of divorce, would confine themselves to this practical limit, they might ac complish something.

The most wholesome sign of the year, is in the direction of unifying the practice in the state and federal courts. A Committee of Supreme Court Justices has been appointed to take up this subject. Your committee suggests that an effort be made through the American Bar Association, to secure a practice code, which will be approximately uniform throughout the several states and in the federal jurisdiction. This can only be accomplished after a revised practice code has been settled for the Federal courts, then the states should fall in line and adopt that code. The wide divergence between the state and federal practice, existing at the present time in almost every state, is attributable to the entire failure of the Federal courts to conform their practice to modern notions of simplicity, but now that the Federal courts have moved and promised a re formed practice, the lawyers comprising the state associations, should be awake to the importance of bringing about a uniform system, by conforming the state practice to that of the Federal courts, when revised. In this matter of practice, lawyers can hope to have some influence. Discussions of matters of general legislation and fundamental principles of government, may be entertaining in an association like this, but that such discussion will produce any results, is more than can be expected in this day of reconstruction of our political institutions and legal foundations.

Respectfully submitted,

B. S. GROSSCUP, Chairman,
SEABURY MERRITT,
WILL J. GRISWOLD,
D. H. CAREY,
IRA BRONSON.

Mr. President—Gentlemen, you have heard the report. If there be no objection, it will take the same course as the last one.

The report of the Committee on Legal Education and Admission to the Bar, Dean John T. Condon, of Seattle, chairman.

Mr. Condon—Mr. President, and members of the Bar Association of the State of Washington:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Honorable Bar Association of the State of Washington:

Gentlemen: Your Committee on Legal Education and Admission to the Bar beg to report as follows:

The legislature of 1909 passed a law upon the subject of admission to the bar which contained the following new features:

1. Stated a specific requirement for the general education of all applicants for admission to the bar to be the equivalent of a good four year High School education.

2. Made the filing of a two year notice of the study of law with the Clerk of the Supreme Court the prerequisite to taking the examination.

At the last annual meeting of this Association, at the City of Bellingham, there was considerable discussion over this law of 1909 and dissatisfaction was expressed with the operation of the law in respect only to the fact that the two year notice feature of the law of 1909 did not seem to allow the court any discretion in caring for cases where misfortune had prevented the filing of the two year notice.

A special committee was appointed and reported in favor of the plan or requiring students to be registered at the beginning of their course of preparation and proposed a plan allowing the court discretion in caring for the cases of hardship from failure to file. (This report can be found in full at page 72 of the proceedings of this Association for last year.)

This report was adopted and the chairman of the committee was requested and empowered to act in furtherance of said report.

A bill was prepared and submitted to the Legislature of 1911 in furtherance of this report, but the same was not passed by the Legislature, and in its stead the Legislature passed the amendments to the law of 1909, which are found as Chapter 48 of the laws of 1911. This new law struck out all specific requirements as to general education and put in its place a general statement that the applicant shall be examined as to his "knowledge of law, general learning, fitness and qualifications."

In the judgment of your committee this was a decided step backwards and should be corrected. The principal argument against a specific requirement for a general education equivalent to High School is made in behalf of the poor boy who has to work in an office or perhaps in a mill, store or factory, and for that reason cannot go to school. The State of Washington, however, cares for such

men in a way not done in many other states. Besides the many free night High Schools which are operated in the larger cities of the state, Secs. 4735 to 4737, inclusive, of Remington's Code, create a system of extension High Schools in this state so that the man who is compelled to work in the logging camp or in the mine may study the subjects of a High School course and take the examination without cost in his own county several times a year at the same time the teachers' examinations are held. These examinations may be taken subject by subject, i. e., when he completes a subject he may pass the examination upon it and put it behind him. And Sec. 4737 of Remington's Code provides: Upon the completion of the full course as outlined by the State Board of Education, a State High School certificate shall be issued to the applicant by the said Board and such certificate shall entitle the holder thereof to enter the Freshmen class of the State University or to enter any other class in the other state educational institutions as may be specified by the State Board of Education.

Your committee feels that there is a conflict between those who want no requirements as to general education and those who desire a reasonable standard, which can and should be adjusted, and we feel, in view of the fact that this Association will have another meeting before the next regular meeting of our Legislature, that your Committee on Legal Education and Admission to the Bar, to be appointed by the incoming president of this Association, be instructed to draft a bill which will restore the standard of general education substantially as it was in the law of 1909 and revise the whole subject of admission to the bar in accordance with the said report adopted at the last meeting of this Association, and report the same to this Association at its next regular meeting, for action.

Respectfully submitted,

JOHN T. CONDON, Chairman.

Mr. Condon—Mr. President, I move the adoption of the report.

The motion received a second and the report was adopted.

Mr. President—"The Delay of Courts," by Hon. Stephen J. Chadwick, Associate Justice of the Supreme Court. (For paper see Appendix.)

(Prolonged applause.)

Mr. Graves—Would it be permissible to make a suggestion or remark concerning a matter that was suggested by the article just read?

Mr. President—On the program we have "General Discussion," which I assume would come more nearly fitting the occasion. I will sustain your objection to the extent that Judge Chadwick was out of order in the comment he made upon your report.

Mr. Graves—I do not want to take exception to that. I simply would add approval to the article.

Mr. President—The Secretary is in receipt of a telegram from Mr. Walsh to the effect that it is impossible for him to be with us until tomorrow morning. In the meantime Mr. Peterson has consented to read his paper this afternoon, instead of tomorrow, so we will have "A Visit to the Courts of Germany," by the Honorable F. H. Peterson, of the Seattle bar: (Applause.) (See Appendix.)

Mr. President—The report of the Committee on Publication, Hon. F. V. Brown, chairman. Is Mr. Brown present?

Mr. Secretary—Mr. President, I think Judge Brown is not here and, as I am on that committee, I think probably I should make the report. The province of the Committee on Publication is to take charge of the printing of the Annual Proceedings. The Chairman did not exercise his prerogative to any great extent the last time. I say that since he is not here to contradict me. That duty fell largely on the Secretary's office, and here I want you to know, not only for the Secretary, but for the Committee on Publication, that we enter an apology for the delay in getting out last year's proceedings. I think something is necessary to expedite the early publication of our proceedings. The committee is entitled to the censure of the

Association, and I hope there will be no such delay next year. In fact, if I shall have anything to do with getting out the report, it will be out in a couple of months after this meeting.

Mr. Jones—I move the adoption of the report—particularly the censure.

Mr. President—The objection is sustained. Is there any other new business to come before the Association at this time?

(Announcements were here made by Mr. Edge as to entertainment, etc.)

Mr. Condon—I have a resolution to offer, Mr. President:

"Be It Resolved that a committee of five be appointed by the President to investigate the subject of the laws delays, to devise measures to expedite legislation and frame such amendments in relation thereto as may be deemed advisable and report same to this Association at its next convention."

I move the adoption of the resolution.

The motion received a second.

Judge Chadwick—I am opposed to that motion. I do not admit for a moment there is any delay or has been any delay.

Mr. Condon—Mr. President, by way of answer to that, the very suggestion came from Judge Chadwick. "The Law's Delays" are quoted. That is, there are some delays. It is rather the lawyer's delays.

Judge Chadwick—I withdraw my objection.

Mr. Graves—This may not be an entirely unauspicious time to say what little I desired to say at the conclusion of Judge Chadwick's address. I differ from him in the conclusion of that paper. I think I approve all he said in that paper, and particularly what he said in regard to making up the

record on appeal. It appears to me, however, that his imputation, as I understood it to be, that these enormous records were wholly the fault of the lawyers, was unjust. While frequently these enormous records are due to the laziness and slovenliness of lawyers, in a vast majority of cases it is due to the fact that lawyers are afraid to resort to bills of exception where they desire to take up only one or two questions and to have the court pass upon those one or two questions. The statute seems to permit but two certificates to be made by the trial judge; the one is that the statement of facts embodies all the material facts occurring during the trial and not already a part of the record; the other is that the bill of exceptions contains matters occurring in the course of the trial and which are thereby made a part of the record. Now, suppose that you have but one or two points that you desire to present on the appeal. In order to present those you have got to have, at least, part of the record there and if you take up a bill of exceptions with a certificate attached that these merely are matters occurring during the course of the trial, the Supreme Court will probably say, "There was probably something else occurred there that would be error," and therefore a lawyer does not care to take up a bill of exceptions. There is not one case in a thousand that you can safely take up by bill of exception under our practice as it now is. Now, the remedy for this lies not with the lawyers but with the court. I believe it to be wholly within the power of the Supreme Court to provide, by rule, a rule relating to appeal, that a party desiring to appeal, at the time of filing his statement of facts or bill of exceptions, shall file an assignment of errors and that, if it is not necessary for the consideration of those errors that the whole record go up, that the court can certify that the bill of exceptions then filed contains all the matters that are material to the errors assigned. That power, as I say,

lies with the court and they can, in my opinion, renovate this very slovenly practice that we have now, and remove the objections that are properly raised to it.

Judge Chadwick—Mr. President, I heartily agree with Mr. Graves in the suggestion that he has just made. The remedy is with the court if it would but apply it. During the last session of the legislature I talked with Mr. Graves about the manner of bringing cases to the Supreme Court. Our present practice seemed burdensome to me and I suggested to him that he prepare a form of rule for the court. He did so. This I submitted to the judges but was unable to impress the court with the importance of a change in procedure. I do not remember that any of the judges took the position that we could not adopt a rule of that kind, but it seemed to be the opinion among most of them that the time had not come when it was necessary to do it. But, notwithstanding the attitude of the court, I believe that it is within the power of attorneys in most every case to avoid long statements of fact, by presenting a bill of exceptions. If this practice were understood, much time could be saved to the court and cases decided as well or better than they are at the present time. I know that there has been much to discourage attorneys from adopting this practice for the court has on one or two occasions refused to interfere with the judgment of the lower court for the assigned reason that it might be that facts material to the case had not been brought to the court. This reasoning, of course, is illogical and untenable. In one of such cases I am sure that the record contained all of the material facts for it was not objected to by the respondent, and surely if attorneys are satisfied with the bill of exceptions the court should be. I should like to see the practice more generally adopted.

Mr. Jones—I heartily agree with what Senator Graves

has said and except to the speech of Judge Chadwick. I know that in my office we have had to make it a rule, for safety, to order the stenographer to send up everything and to order the Clerk of Court to send up the entire record, because we have seen these decisions—fortunately none of them in my cases—in which we have been scared to death for fear the Supreme Court might say, "If you had brought up a couple of pages more we might have sustained the assignment of errors." I was educated in a state where we had the assignment of errors and then a bill of exceptions and had no such statement of facts as we have in this state. But, as long as we are on this question, there is another statement, made by Judge Chadwick in his article, which I want to meet at this time. He says he doesn't believe in a code commission, and the reason he doesn't believe in it is that we have a code commission now, and it revises the code and we adopt that code and then in ten years we will have to have another one and then in another ten years, have another one, and so on. I believe in a permanent Code Commission, a Code Commission that has the same standing as the Supreme Court, that will take our laws as they have been adopted from time to time taking, in reference to that, the holdings made, and make a code, not changing the laws any more than necessary to obliterate the repetitions, and then a code committee permanently in session so, at every session of the legislature, we have a permanent advisory of the judiciary committee to see if the laws introduced are not already the law or conflict with the law or must be fixed so as to conform to our law, so establishing it. I agree with Judge Chadwick that these temporary code commissions do not amount to anything, but I believe in a permanent one.

Mr. President—There is a motion before the house to which I desire you to direct your remarks. It seems to me

what has been said by the last two or three speakers would be classified under the next head, "General Discussion."

Mr. Graves—Mr. President, my remarks were in support of that motion.

Mr. Stern—Mr. President, members of the Association: Thirteen years ago, when I had the honor to be President of this Association, I departed, as I usually do, I presume, from all custom and I suggested that time, as part of my paper, that we do something in the way of the reforming the civil procedure, at least, under which we were practicing in this State, and I made those suggestions because, for thirteen years, I had practiced in the State of New York where they had practically a civil code and which has withstood the test of the courts, as a rule and which has given satisfaction and which has resulted in what? In minimizing the waste of time that had theretofore obtained either on the part of the courts in the administration of so-called justice or in the general trial of causes. I am in favor of this resolution for that reason, and I want to see—and I have attempted to have that brought about in this State for a long time—the interposition of terms upon the granting or denial of motions or the sustaining or overruling of demurrers. Where I came from, if you interposed a demurrer it formed an issue of law, which was tried exactly as you tried any issue, and it cost you forty or fifty dollars to find out whether or not you were right in the law. The result of that was that we did not have to go over to any law day or motion day and sit around all day long for some new-comer in the community to have you file a cost bond. We did not have to waste any time in little trivial motions that mean nothing but expense and waste of time; a judge and court officials at the court house to handle our papers and file our trivial motions, because we never reached the point

where we contested a question of law or question of fact without that as the allegation. I favor this motion. In the past we created a committee whose duty it was to make it its business to see that we had terms so as to lesson the number of motions made and so as to bring about the more speedy trial of cases, and to present those matters to the legislature and stick by the legislature until something was obtained. When we write to a legislator, he has other fish to fry and he pays no attention to it. If this means anything, let us do it right; have a committee that will do this work and show us where we can eliminate a great deal of this delay and come down to speedier trials. Now, I do take exception to some of the things which the illustrious gentleman has referred to, and I think they are right in line with this resolution. And personally, I think there ought to be some provision absolutely abolishing petitions for rehearing, because they are practically abolished now and we might as well save our time. If we are going to have only the short time we have in court—half an hour—we might as well abolish these big records. Let us cut down our records in the Supreme Court, and then you will learn to do what we had to do in New York State—get down to business and boil matters down, and that costs money, as it did in New York State. I think our courts, sometimes, are taking to themselves all the wisdom there is, while I think a little travel will convince you that other countries have pretty good system and administer justice readily. In a short trip which I took, in which I had the opportunity of visiting China, Japan, ——— ——— ——— ——— I could not but come to the conclusion that they got at the gist of things and got at the truth of things and did it with one-half the expense and with a great deal more dignity, as a rule than you find displayed in the courts here. So let us investigate this matter and let us have a committee that will do this work properly

and report in time for some good work at the next legislature which will give us some relief from the very evils of which we all complain.

Mr. President—Mr. Condon has concurred in the suggestion of the President to change this resolution by inserting a clause so it will read like this:

"Be It Resolved that a committee of five be appointed by the President to investigate the subject of the law's delay, to devise means to expedite litigation, to frame such measures, draft such rules or suggest, such proceedings in relation thereto as may be deemed advisable."

If I am not in error, Senator Graves, in a bill known as the Graves bill, which this Association was instrumental in having passed several years ago at the time when the court was divided into departments, sought to provide a method by which the court, by promulgating certain rules, could accomplish the purpose for which this resolution seems designed.

Mr. Robertson—Mr. President, I think that we have the best system and cheapest system of appeals possessed by any jurisdiction that I am familiar with in the United States. It is practically impossible to perfect an appeal to the Circuit Court of Appeal for a man who has lost a case if he has only small means. Now, you can take a case up to our Supreme Court by bill of exceptions and you can also take the entire record up, and it seems to me if the entire record goes up and the rule is enforced that an attorney shall specify his error in his brief, he thereupon creates his bill of exceptions in the brief and at a time when mature deliberation gives him the opportunity to prepare the record based upon the facts as they are shown to exist and upon examination of this record. You do not get the substance of the case in a bill of exceptions; it is impossible to get the attitude of the parties in the case

below. Bright attorneys, skilled in the preparation of statements of fact, reducing a short record of a case to a bill of exceptions, may deform the statement of facts—

Mr. President—It seems to me that this matter would more properly come up under "General Discussion."

Mr. Robertson—I want to add my emphatic protest against taking away from a man the record in use today and substituting a record in which the rights of the parties cannot be presented.

Mr. President—I think those remarks would properly come up when the report of the committee is made next year. Are there any further remarks on this motion?

No further remarks being offered, the motion was put to the house and carried.

Mr. President—The President will leave action on the resolution to the incoming President. Any further general discussion? We seem to have covered the point. There being nothing further to come before the Association at this time, we will be at recess until tomorrow morning at 10:30 o'clock.

Thursday evening, under the auspices of the Spokane Bar, a smoker was held at the Masonic Temple, at which refreshments were served and the members were entertained by high class vocal and instrumental music and by some excellent vaudeville stunts. Also some witty speeches were made and entertaining stories told by various members.

Morning Session, Friday, July 28, 1911, 10:30 O'Clock.

Mr. President—Gentlemen, the first order of business on the program today is the report of the Legislative Committee, Hon. C. W. Dorr, of Seattle, chairman.

Mr. Dorr—Mr. Chairman: Within the last few days there has been handed to me, by Richard Saxe Jones, some matter that the committee has not had time to examine, because it has been impossible to get the committee together. The matter suggested relates to the payment of judges, and the removal of judges. Mr. Jones also submits a bill providing for a permanent basic code and a permanent code commission. As these suggestions have not been before the committee as a whole, I desire to move that they be referred to the new Committee on Legislation to be appointed by our incoming President; also that Mr. Jones' proposed code commission act, which I will deliver to you, be printed in the new proceedings of the Association, and that the Committee on Legislation be directed especially to report upon the same. I make this motion, Mr. Chairman, for the reason that it has been absolutely impossible for the Legislative Committee to consider these matters at all.

The motion received a second and was carried.

REPORT OF CHAIRMAN OF LEGISLATIVE COMMITTEE.

To the President, Officers and Members of the Washington State Bar Association:

Gentlemen:

The chairman of your Legislative Committee, without having had the opportunity of consulting with the other members of the Committee, respectfully submits the following report upon his own responsibility, but with the sincere hope that it may be approved by his associates:

The new legislation of our state for 1911 is very voluminous, to my mind far beyond the necessities of the situation. Our law makers have given us 652 pages of new statutes this year. While this is a happy reduction from the 1909 session that produced the maximum of 1030 pages of laws in sixty days, and is a trifle under the 1907 output of 758 pages, yet it seems incomprehensible that a twenty-one year old state should require the biennial enactment of such an enormous amount of new statutes.

Much of the new legislation is, of course, useful and beneficial, and there should be no criticism in that direction, but a considerable proportion of all new laws is of little or no value, and some of them are actually mischievous. The general result of this wholesale law making is that the people are overwhelmed every two years with a great volume of new statutes, many of which cannot be interpreted or learned before the next succeeding session, at which time they are revamped, modified or repealed, and thus we are continuously in a state of turmoil, unrest and insecurity.

Upon the point of useless legislation, take as an illustration the subject of material men's liens. Long prior to 1909, the statute law was fully interpreted and so well settled that those concerned very generally understood its provisions, and knew how to proceed to establish liens when occasions required. Litigation over those liens, which had occupied a very large proportion of the attention of our courts during the earlier history of the state, had practically ceased. The people not only understood but accepted the provisions of the statute, as interpreted by the courts, without much or any further contest.

In 1909, the legislature passed what, on its face appeared to be, a very simple act, requiring that a duplicate statement of all materials furnished to any contractor be sent to the owner of the premises at the time such materials or supplies are delivered. (Laws 1909, p. 71.) The new statute not only provided for an innovation upon the old law, by requiring duplicate statements of materials to be sent to the owners, but left the question wide open, as to whether the duplicate statements or invoices must be sent at the times of each separate delivery, or whether one completed statement of all material delivered to any one job was sufficient. Material men and merchants, though like the rest of us, are supposed to know the law, did not understand this new requirement, and the most of them did not actually know of its passage for some time after it went into force.

At the special session of the legislature of 1909, an attempt was made to elucidate the scheme of notifying the owners of the delivery of materials to their premises, by providing in terms that it would not be necessary to give notice each time a delivery is made, and specifying with much particularity how the one general notice should be given to the owner. The new act also expressly repealed the earlier act. (Laws 1909, Special Session, p. 70.)

The Governor, however, vetoed the entire act, as passed at the special session, except only the repealing clause and the emergency clause, both of which were approved, doubtless upon the theory that he then disapproved the spirit and purpose of both these statutes

in requiring material men to notify the owners of property of sales of materials and supplies to their contractors, although he had previously approved the act of March 4th, 1909. The effect of the executive action, with respect to the second enactment, was undoubtedly intended to leave the law as it was prior to the passage of the first act of 1909, thus absolutely doing away with all requirements of notice to the owners, and it is safe to assume that the material men of the state, who had then become quite alive to the situation, so understood it, and proceeded thenceforth upon the Governor's theory, omitting to send out any further notices to the owners. Shortly thereafter the courts were again flooded with material men's lien suits, as of yore. These various proceedings imposed a new burden upon the courts, as it became necessary to determine the effect of the Governor's vetoes of the four sections of the act of the special session of 1909, but not until June 16th, 1910, or about ten months later, were the people informed by a decision of the Supreme Court (Spokane Grain & Fuel Co. v. Lytaker, 59 Wash. 76), that when the Governor approved the repealing section of the later act, he approved something that his veto had already destroyed; that as the legislature had attempted to substitute one act for another, the executive had the right to place his veto on the substitution, but he could not defeat the one act by his veto, and the other by approving the repealing clause.

The net result of the whole thing was that the attempted repeal of the act of March 4th, 1909, was a nullity, the attempted substitution act was likewise made null and void by the veto, and the earlier act, after being supposedly dead from August 28th, 1909, to June 16th, 1910, was resuscitated and brought back into active life. Meantime, the claims of material men, who had not given the duplicate notice to the property owners were in jeopardy.

We are now confronted with another new act approved March 13th, 1911, requiring the seller to notify the owner, not later than five days after the date of the first delivery, that he has commenced to deliver materials and providing that no lien shall be enforced unless this provision is complied with. (Laws 1911, p. 376.)

We are not particularly concerned with the wisdom of this legislation, as a primary consideration, but that the law making branch of our state should deem it necessary to keep tinkering with stable laws, constantly injecting into them new conditions and requirements, by which property rights may be destroyed and the rule of action changed from year to year, without any corresponding benefit, should be a matter of deep concern.

If our people are to be held responsible for knowing the law,

the powers that make and change the laws ought to enter upon the task of amending well settled and stable laws with the greatest caution, and most serious deliberation, and then only in cases of absolute necessity.

In order to know the laws, the people ought, in reason and justice, be entitled to have them remain on the statute books with some degree of permanency, that they may be read and understood. In that way, they will be respected and obeyed. To have our statutes constantly undergoing changes and amendments is to weaken their efficiency and destroy the respect of the citizen for the law of his land.

In 1897, the legislature passed a comprehensive school code covering some 94 pages of the session laws, and embraced within 258 sections. This act has since been amended more than one hundred times.

In 1909, an entire new criminal code was passed. In the opinion of the writer, this was the most ill-advised, unwise and uncalled for piece of legislation that has yet appeared. After twenty years of judicial interpretation of the penal statutes of the state, the precedents of two decades are practically swept as de, and our courts must do their work over again.

The need of this age is not so much for new legislation as the enforcement of the old.

Probably the most important act of the 1911 legislation is that relating to compensation of injured workmen, known as chapter 74 (p. 345.) This act occupies an entirely new field in our remedial statute law, and if the scheme of the law works out as it is designed, it should produce beneficial results of great importance to both the employer and employee, and as well relieve the courts of a very considerable burden heretofore imposed by the trial of personal injury damage cases.

Among the other important acts of the last legislature may be mentioned:

The local improvement act, relating to local improvements in cities and towns, Chapter 98, (p. 441.)

The new public service commission act, by which the railroad commission has been merged into a broader and more comprehensive field under a law including the power of regulation of all general public service corporations. Chapter 117, (p. 538.)

The new insurance code, purporting to be a complete statute on the subject of insurance in its various branches and details. Chapter 49, (p. 161.)

Acts were also passed providing for the nomination of Superior

and Supreme judges by direct primary. Chapter 101, (p. 489), and

Relating to the disqualification of Superior judges, Chapter 121 (p. 617.)

This last mentioned act, in its present form, is liable to produce serious abuses and delays in the administration of justice, especially in counties or districts having but one Superior judge.

The act provides that any party to, or attorney appearing in any act on may establish prejudice on the part of the judge, by motion supported by affidavit. Upon the filing of such motion and affidavit, the court is powerless to proceed and he must transfer the case to another department of the same court, call in an outside judge, apply to the Governor to send a judge to try the case, or send it to some other convenient court.

No time limit restricts the proceeding; it may be taken on the very eve of a trial of either a civil or criminal action. The opposite party being ready for trial with his witnesses, may be forced to submit to a continuance upon the mere filing of an ex parte affidavit of prejudice.

While no one would contend that a prejudiced court should preside at any judicial hearing, it must be equally obvious that the question ought not to be tried out in any such an ex parte, summary manner as is authorized by the statute under consideration.

In courts consisting of two or more judges, the matter is of little consequence, as the case can be readily transferred to another department by the judge against whom the affidavit is filed, but in courts consisting of but one judge, the consequences are likely to be indeed serious.

INITIATIVE, REFERENDUM AND RECALL.

Amendments to our constitution were proposed by the last legislature covering these so-called progressive innovations.

Chapter 42, (p. 136) covers the proposed amendment for direct legislation. Under this amendment, if adopted by the people at the general election to be held in November, 1912, it will be competent for any person or special interest to have submitted to vote any proposed measure upon which they may be able to secure petitions signed by ten per cent. of the legal voters of the state, and upon an affirmative majority of the votes cast thereon at the general or special election to which the question is referred, the same shall become a law, provided that the vote cast upon such question or measure shall equal one-third of the total votes cast at such election. That is to say, on a basis, for instance, of 180,000 votes, all told, cast at any

election, in order to pass the initiative law, there must be at least 60,000 of such votes cast on said proposed law, for and against, and of the 60,000 votes so cast, more than 30,000 of such votes must be for the measure. It is therefore possible to initiate the law on a ten per cent. basis and to pass it on a seventeen per cent. basis of the voters of the state, and thus the people will rule.

The proposed amendment requires the full text of the measure to be submitted, to appear on the petitions, but there is no requirement that it shall so appear on the ballots, and for aught we may know, these new propositions for our votes may be as vaguely stated on the ballot as was the equal suffrage amendment that was submitted at the last general election, which merely read as follows:

"For (or against) the proposed amendment of Article Six (VI) of the Constitution, relating to the qualification of voters within this state."

Now, regardless of whether we were for or against woman suffrage, we must, in fairness, admit that the proposed amendment was not so plainly stated as to inform the average voter what he was voting on.

In South Dakota, where the full text of the measures submitted is required to be printed on the official ballot, the ballots used at the last election were approximately seven feet in length.

In Oregon, where the direct legislation method was adopted in 1902, four elections have been held, the first occurring in 1904 and the last in 1910.

In 1904, two measures were submitted, in 1906 eleven, in 1908 nineteen and in 1910 thirty-two consisting of twelve constitutional amendments and twenty statutes; the pamphlet containing the brief arguments for and against each measure for that year consisted of 202 closely printed pages. Each voter was expected to exercise his deliberate and well considered judgment upon the merits of twenty statutes and twelve constitutional amendments; one of the amendments consisted of thirty-six sections. He had nothing before him as a guide but the titles of the bills when he entered the polling booth. Besides all this, the voter is supposed to select and vote for his choice among the numerous candidates for elective office. Each measure submitted must be accepted or rejected in its entirety. In the Oregon instance mentioned, where the constitutional amendment contained 36 sections, one was required to vote for all or against all of the 36 sections.

The following title illustrates the complicated difficulties which confronted the Oregon voter who was asked to intelligently vote

"yes" or "no" upon this thirty six headed amendment to the organic law of the state:

"An amendment of Art cle IV, Constitution of Oregon, increasing initiative, referendum and recall powers of the people; restricting use of emergency clause and veto power on State and municipal legislation; requiring proportional election of members of Legislative Assembly from the State at large, annual sessions, increasing members' salaries and terms of office; providing for election of Speaker of the House and President of Senate, outs de of members; restricting corporate franchises to twenty years; providing ten dollars penalty for unexcused absence from any roll-call, and changing form of oath of office to provide against so-called 'legislative log-rolling.'"

There is no opportunity for amendment or modificat on. The proposition must be taken or rejected in its entirety as submitted.

This new general scheme of law making by wholesale creates a dual legislative power. It retains the legislature, permits it to amend or repeal any law enacted by direct vote (after two years) and permits the legislative body to enact, repeal and amend other laws at its will, while at the same time vesting in the people at large the same and some addit onal powers of law making. The two powers are in direct, absolute and irreconcilable conflict.

If the people are of weak faith in their legislators, why not abolish the legislature rather than cripple its effic ency by inaugurating a competitive system of law making. It must be admitted that we have had some careless legislation, but are the people themselves blameless, do they not expect too much of their representatives, are they always careful enough in the r selection, and how will the new order of things improve the standard of our legislation?

We are all seeking the same result, namely: the emancipation of the people from unwise and unjust legislation, and the enactment of wholesome righteous laws for our government.

Under the representative form, opportunity s given for debate an exchange of ideas by the members from all sections of the state, full and deliberate consideration, amendment and modification of the bill as originally introduced. Under the in tiative system, a single person may draft a bill, secure the requisite number of signers to a petition for its submission, and the people must take t or reject it in its entirety.

In Oregon, it has been demonstrated that signers of initiative pet tions were frequently procured in great numbers among foreigners unfamiliar with the English language, many of whom are employed in some of the great construction and operating camps; these men have freely signed their names to the petitions without any

knowledge of their contents. It seems to be a simple matter to procure pet tioners to almost anything in almost any place, and it should be a cause of most serious consideration as to whether our organic or statutory laws ought to be created or repealed in this flimsy slipshod manner.

It is not a question of "trusting the people" but it is a question of gett ng them to take an active interest in what they are entrusted to do. If the people will wake up to the importance of electing good and competent members of the legislature, the remaining difficulties will take care of themselves.

Chapter 108, Laws 1911, (p. 504) contains a proposed constittuional amendment providing for the recall of all elect ve public officers in the state of Washington, except judges of courts of record. This amendment, if adopted, and made effectual by legislation, would permit, as instances, every person who is aggrieved at the decision of a justice of the peace, in deciding a suit against him, or who imagines that an assessor has discriminated against him in over valuing his property for assessment, or the members of any board of county commissioners who have neglected to lower the assessment or refused to open a road across his neighbor s land, to immediately start recall proceedings.

Instead of fewer elect ons, we will have more; unrest and turmoil will ensue. Our officials will never be exempt from unjust attack. The evil results are likely to greatly outweigh the good.

Again it is suggested that if the people will properly assert themselves in the selection and election of the r public officials, there will be little cause for complaint. A good man is good anywhere in public or private life, and a bad man is nearly always bad. Elect good men to office, pay them good wages and there will be no necessity for a recall law.

Ment on might here be made of one other proposed constitutional amendment that was introduced into the last legislature, but happily failed of passage, as illustrating the tendency pervading the disordered minds of a portion of our ill advised cit zens. Reference is made to House Bill No. 13, entitled:

"No act or proceeding of the legislature, or part of any act or proceeding, shall be set aside or declared unconstitutional by any Justice, Judge or Court whatsoever. The w ll of the people, as expressed by an enactment of the legislature, or by the people, shall be the supreme law."

While the spirit of this proposed amendment is apparently somewhat more "progressive" and advanced, (as those terms are now being misused) than is exhibited by the in tiative, referendum and re-

call propositions, yet the idea of abolishing the constitution by amending it out of existence is merely sporadic. We should be progressive in the true sense, but we should not progress backwards.

Upon the bar of this state rests a great responsibility for the uplift of mankind. Our influence should always be exerted for the enactment of wise, just and wholesome laws, and for their strict and honest administration and fearless enforcement, without fear or favor, and without regard for future consequences, that equal justice may be done to all, rich and poor, high and low.

It is not more systems we need, but the faithful and honest application of what we have. Of all men in the community, the lawyer should always be found standing for the right and forever opposing the wrong. In this way, our institutions will be safe, they will amply perform the true governmental functions for which they were designed, and little cause will exist for trying political and judicial innovations and nostrums. Some people, of course, are so constituted that they cannot read the patent medicine advertisements without feeling all the symptoms of the disease. These people of restless dispositions are entitled to great sympathy, but they should not be permitted to inoculate the body politic with the virus of discontent.

Very respectfully submitted,

C. W. DORR, Chairman.

PROPOSED ACT FOR A CODE AND A CODE COMMISSION SUBMITTED BL RICHARD SAXE JONES.

An Act Entitled "An Act Providing for a Permanent Code Commission for the State of Washington; the Submission of Proposed Acts of the Legislature Thereto; Providing the Method of Preparing a Permanent Code of Laws of the State of Washington, and Maintaining the Same."

Be It Enacted By the Legislature of the State of Washington:

SEC. I: That there is hereby created a commission to be known as THE CODE COMMISSION OF THE STATE OF WASHINGTON.

SEC. II: Said Code Commission shall consist of five members to be appointed from time to time, as herein provided, by the Governor of the State of Washington, approved by the State Senate, which members shall be appointed and approved as follows:

Immediately upon the taking effect of this Act there shall be appointed by the Governor of the State of Washington five members of said Code Commission to be selected from among the attorneys

at law of the State of Washington who are admitted to practice before the Supreme Court of said State and are members of the State Bar Association. Two of whom shall be appointed for a period of two years; two for a period of three years, and the remaining member for a period of four years; who shall each take an oath of office as such Commissioner similar, so far as the same shall be applicable, to the oath of office taken by the Judges of the Supreme Court of the State of Washington; each of whom shall hold office until his successor has been appointed, confirmed and has qualified.

SEC III: Previous to the session of the Legislature next, before the expiration of the term of any Code Commissioner or Code Commissioners, the Governor shall appoint a successor in office of any Code Commissioner or Code Commissioners whose term or terms shall expire subsequent to the next session of the Legislature, and prior to the succeeding session; such appointment shall be presented to the Senate of the State of Washington for confirmation, and if confirmed by a majority vote of the Senate such Commissioner or Commissioners shall succeed to the office of Code Commissioner or Code Commissioners whose official term may expire next after the session of the Legislature.

If any appointment so made by the Governor of the State of Washington shall be rejected or not confirmed by the Senate, then the Governor shall appoint from time to time other persons qualified as above set forth as Code Commissioners until the same shall have been accepted and confirmed by the Senate of the State of Washington; and any appointment so made by the Governor when the Senate is not in session shall be sufficient to authorize such Code Commissioner to fill the office of any Code Commissioner whose term has expired, to which he has been appointed, until his name has been accepted and approved or rejected for such office by the Senate of the State of Washington.

SEC. IV: If for any reason any vacancy shall exist in the office of Code Commissioner, the Governor of the State of Washington shall immediately appoint a person duly qualified as above set forth, to fill such office for the term for which such vacancy exists, and, upon taking the oath of office herein prescribed, such appointee shall immediately become a member of said board of Code Commissioners.

Such appointment shall be reported by the Governor to the next session of the State Senate within one week after it shall have convened, and the Senate shall proceed to confirm or reject such appointee.

If rejected, then the Governor shall appoint from time to time other persons qualified as above set forth as Code Commissioner,

until such appointment has been accepted and confirmed by the Senate.

Any appointment so made by the Governor shall be sufficient to authorize such Code Commissioner to fill the office until his name has been accepted or rejected for such office by the Senate of the State of Washington.

Duties.

SEC. V: It shall be the duty of the said Board of Code Commissioners,

FIRST: To proceed at once to codify all of the laws of the State of Washington in force and effect at the time of the first meeting of said Board, preparing the same in printed form in such manner as to eliminate from the laws of the State of Washington then existing, all duplications; to arrange all of the laws in proper order with reference to the subject to which they relate, dividing the same into subjects, chapters and sections, as may be necessary to prepare a full and complete code of laws of the State of Washington as they then exist.

SECOND: It shall be the duty of said Board of Code Commissioners having prepared such a codification of the laws to present the same to the next session of the Legislature of the State of Washington after the same have been duly prepared, presenting the same in printed form in such numbers that each officer and member of the Legislature next succeeding the printing of the same may have three copies thereof, and further printing sufficient copies so that every Judge of the Supreme Court and of the Superior Courts of the State of Washington, and every member of the State Bar Association of the State of Washington may receive a separate copy thereof, and such copies shall be furnished to said Legislators, Judges and members of the State Bar Association as promptly as possible after the compilation has been completed.

THIRD: The code so compiled by the Code Commission, and so presented to the next session of the Legislature after its compilation shall be immediately placed on the Calendar of each house of the Legislature for adoption, and may be adopted as a whole or with such amendments as shall be provided by the Legislature of the State of Washington; and when so adopted shall be and remain the permanent basic code of the laws of the State of Washington, and shall have the full force and effect of law, the same as though each section thereof had been adopted separately by the Legislature and approved by the Governor.

Future Legislation.

SEC. VI: After a permanent basic code has been adopted by the Legislature of the State of Washington, and approved by the Governor as hereinbefore set forth, and as now required by law, the Code Commission shall remain in permanent session at the seat of Government of the State of Washington for the purpose of examining into all future legislation proposed to be adopted by the Legislature of the State.

SEC. VII: No Act of any kind, except for the appropriation of money, or because of an emergency shown in said Act by reason of which it cannot be submitted to the Code Commission, shall be enacted by the Legislature of the State of Washington until it has been first submitted to the Code Commission at least ten days before its third reading in the Legislature; and shall be certified by and reported upon by the Code Commission.

SEC. VIII: Five copies of every proposed bill or enactment by the Legislature of the State of Washington shall be submitted to the Code Commission, in typewritten form, at least ten days before the same is read for the third time in the Legislature, and said Code Commission shall immediately proceed to examine the same in connection with the permanent basic code of said State of Washington, and within five days after receipt thereof shall report to the Legislature of the State of Washington (if then in session, or to the Secretary of State if the legislature is not in session), the place which said bill should occupy in the code of laws of the State of Washington by chapter, section or number, as the case may be; and with such report shall file its approval of or objection to said bill, giving the reasons therefor, and suggesting in writing any alteration or amendment that should be made to cause said Act to conform to the permanent basic code of the State of Washington.

SEC. IX: In its report upon any bill proposed to be enacted by the Legislature of the State of Washington, said Code Commission shall state in writing its views as to the constitutionality of said proposed Act and its effect, if any, upon vested property rights under former legislation and the decisions of the Supreme Court. It shall, in all matters, advise the legislative bodies of the State of Washington as to the effect of said proposed enactment if it shall become a law.

Validity of Laws.

SEC. X: No law shall be enacted by the Legislature of the State of Washington until it shall have first been submitted to the Code Commission, as hereinbefore set forth, except laws for the ap-

propriation of money, and emergency laws, as in this Act provided. The record of such submission shall appear upon all enrolled enactments.

Salaries and Terms of Office.

SEC. XI: Each Code Commissioner appointed by the Governor and approved by the Senate of the State of Washington, as herein provided, shall hold office permanently unless impeached or recalled, as hereinafter provided, but shall be retired from office as of course upon his sixty-eighth birthday, and shall thereafter receive a pension of Twenty-five Hundred Dollars ($2500.00) per year during the remainder of his natural life.

SEC. XII: Each Code Commissioner during his active term of office shall receive a salary of Seventy-five Hundred Dollars ($7500.00) per annum, payable monthly, out of the general funds of the State of Washington, by warrant drawn by the State Auditor and payable by the State Treasurer.

SEC. XIII: The Code Commission is authorized to employ assistants, clerks and stenographers as to them shall seem necessary, paying for the services of such assistants, clerks and stenographers reasonable compensation for services, not to exceed One Hundred Fifty Dollars ($150.00) per month for assistants; One Hundred Twenty-five Dollars ($125.00) per month for clerks, and One Hundred Dollars ($100.00) per month for stenographers, unless otherwise authorized so to do by an Act of the Legislature.

Impeachment and Recall.

SEC. XIV: Any member of the Code Commission as hereby created shall be subject to impeachment, and the proceedings for the impeachment of any Code Commissioner shall be the same as provided for the impeachment of a member of the Supreme Court of the State of Washinton, and each, every and all portions of the laws of the State of Washington as at this time existing in reference to the impeachment of a Judge of the Supreme Court, are made applicable to and the proper method for the impeachment of a Code Commissioner

SEC. XV: Any Code Commissioner of the State of Washington may be recalled and his term of office ended by either of the two following methods:

FIRST: By the filing with the Secretary of State of the State of Washington of a written order of recall signed by the Governor of the State of Washington and two Judges of the Supreme Court of the State of Washington.

Upon the filing of such order of recall with the Secretary of State of the State of Washington, the same shall be presented to the Senate of the State of Washington at the next regular session thereof, and a vote shall be taken in said Senate as to whether such recall shall be allowed; and if a majority of the senators duly elected and qualifying at such session of the Senate of the State of Washington shall vote in favor of such recall, then the Governor of the State of Washington shall immediately certify that such Code Commissioner has been recalled, and his term of office shall expire thereby, and a new appointment shall be made in his place as in this Act hereinbefore provided.

SECOND: By the filing with the Secretary of State of the State of Washington of a petition signed by ten per cent. of the duly qualified voters of the State of Washington voting at the last State election next preceding the filing of said petition.

Upon the filing of such petition the Secretary of State shall report the same to the Senate of the State of Washington next in session thereafter, and a vote shall be taken by the Senators of the State Senate of the State of Washington upon such petition for recall, and if a majority of the Senators duly elected and qualifying at such session of the Legislature shall vote in favor of said recall, then upon the certifying of such vote to the Governor of the State of Washington, such Code Commissioner shall be recalled thereby, and his term of office shall expire immediately, and such vacancy shall be filled as in this Act hereinbefore provided.

Mr. President—The next order of business is the report of the Committee on Revision of Judicial System, Hon. Jeremiah Neterer, chairman. I understand Judge Neterer is not here. Have you received a report from him, Mr. Secretary?

Mr. Secretary—I have no report, Mr. President.

Mr. President—The report of the Committee on Judiciary and Judicial Administration, Hon. E. C. Hughes, chairman. Mr. Hughes is not present. I see Mr. Cain, of that committee, is present. Have you any report, Mr. Cain?

Mr. Cain—I do not know of any member of the committee

except myself that is present. We have been unable to make a report.

Mr. President—Under Sec. 2, Art. VII of the Constitution, if but one member of a committee is present, he is the committee. We will next hear "The Facts in the Case," by Hon. Frank S. Dietrich, United States District Judge, of the State of Idaho.

Judge Dietrich—Mr. President, and Gentlemen of the Bar Association: The title, as announced in the program, or the subject proposed, is not very clearly indicative of the suggestions which I desire to make in the paper which I shall present to you, and, at the outset, I say that it will deal with some observations upon the prevalence of perjury in the courts. (Applause at close of address. For address see Appendix).

Mr. President—Gentlemen of the Association, in view of the fact that it is but a quarter of an hour until the noon recess, unless the Association determines otherwise, we will postpone the next paper until this afternoon, but, as we have a few minutes, we might take up some of the committee reports and dispose of them. I want you to be here promptly on time this afternoon because we have three or four very interesting papers. The next order on the program, omitting this address if I hear no objection, is the report of the Committee on Nominations, Hon. C. C. Gose, chairman. Is that committee ready to report, Mr. Chairman?

Mr. Gose—The committee is not yet ready to report, Mr. President. I have been trying for some time to get the committee together. We will prepare the report and submit it later.

Mr. President—The next is the report of the Executive Committee.

EXECUTIVE COMMITTEE REPORT.

Spokane, Washington, July 28, 1911.

To the Washington State Bar Association:

The Executive Committee reports that it has examined the accounts of the Treasurer and Secretary and have approved the same and has authorized the Secretary to pay the expenses of his office out of the current receipts of the Association funds subject to the later audit of the Executive Committee.

We desire further to report that on the 22nd day of February, 1911, the committee, deeming the same appropriate, tendered to Hon. F. H. Rudkin, a banquet in honor of his distinguished services upon the State bench and of his transfer to the Federal bench. The banquet was under the immediate supervision of D. B. Trefethen, Seattle, chairman; D. C. Conover, Seattle; Curtis Abrams, Bellingham; F. M. Dewart, Spokane, and W. H. Hayden, Tacoma. That the banquet was a success goes without saying, the same being without cost whatever to the Association, and the Executive Committee extends its thanks to the above-named gentlemen of the committee.

The said Executive Committee has had no formal session on the arrangement of the program for this session, but has arranged the same through correspondence.

Respectfully submitted,

C. W. HOWARD, Chairman Ex Officio.

Mr. President—We have a short report from the Committee on Federal Legislation, of which Judge Hanford is chairman. He was unable to be present and has sent his report to the Secretary.

REPORT OF COMMITTEE ON FEDERAL LEGISLATION.

To the Washington State Bar Association:

Your Committee on Federal Legislation begs leave to submit the following report:

On the 3rd of March last, the new Judicial Code was approved by the President and becomes effective on the 1st day of January, 1912.

The bill prepared by W. H. Gorham, Esq., to dinimish the ex-

pense of proceedings on appeal and writ of error or certiorari, passed the Senate without an amendment June 24, 1910, and the House of Representatives February 6, 1911, and was approved by the President on February 13th of the present year.

The Supreme Court of the United States has under consideration the subject of revising the "Equity Rules," and the reformation of Pleading and Practice in Equity cases in the courts of the United States, insofar as the same is subject to that court's authority under sections 913 and 917 of the Revised Statutes of the United States. Prior to the recent adjournment of the court, a committee was appointed from among its members to consider and report such changes as would, in the opinion of the committee, tend to the simplification of pleading and practice, and the correction of any unnecessary delay or unreasonable cost resulting from practice under existing rules. To this end the Supreme Court has requested suggestions from committees appointed by the several Circuit Courts of Appeals in the various circuits; and it is believed by your committee that the importance of the subject is such as to call for the appointment of a committee of this Association to carefully consider the subject and submit suggestions to the committee appointed by the Circuit Court of Appeals for the Ninth Circuit, at as early a date as possible, as all reports of the Committee appointed by the Circuit Courts of Appeals are to be filed with the Secretary of the Committee of the Supreme Court of the United States not later than the 1st of November next.

C. H. HANFORD, Chairman.

Dated Seattle, July 18, 1911.

Mr. President—I shall interrupt the proceedings a moment to read a letter which I received from Mr. Robert Moran, at whose mansion home at Rosario, the Bar Assocition enjoyed a brief visit last summer. Those of you who were there will recall it. This is a letter dated August 10th, 1910, addressed to me as President of the Association. Mr. Moran expresses himself as being pleased with our visit last year and with the hospitality and cordiality characteristic of him, invites us to hold our regular session there next year. I would appreciate a vote of thanks being extended Mr. Moran, although we will be unable to accept his invitation.

Mr. Stern—Mr. Chairman, I move that the Secretary be

instructed to write Mr. Moran, acknowledging the receipt of the letter, and giving the thanks of the Association.

The motion received a second and was carried.

(Announcements of entertainment furnished by the Spokane Bar Association were here made by Mr. Edge).

A recess was here taken until 1:30 o'clock, P. M.

Afternoon Session, Friday, July 28th, 1911, 1:30 P. M.

Mr. President—Gentlemen, the Association will please come to order.

The first on the program is the report of the Committee on Nominations, Hon. C. C. Gose, of Walla Walla, chairman.

Mr. Gose—Mr. President, the Committee on Nominations submits the following report:

We recommend as candidates for the several offices of the Association:

For President, W. T. Dovell, Seattle.

For Secretary, C. Will Shaffer, Olympia.

For Treasurer, Arthur Remington, Olympia.

We further recommend that Tacoma be selected as the next pleace of meeting of the Association.

We recommend as delegates to the 1911 meeting of the American Bar Association Judge E. N. Parker, Judge Geo. T. Reid, Charles E. Shepard.

Respectfully submitted,

C. C. GOSE, Chairman,
C. O. BATES,
GEO. H. RUMMENS,
E. C. MACDONALD.

Mr. Bates—I move the adoption of the report.

The motion received a second.

Mr. President—Are there any remarks?

Mr. Bates—Mr. President, in moving the adoption of this report, I desire at the same time, on behalf of the Bar Association of Pierce County and the City of Tacoma and Pierce County, to extend to the members of the State Bar Association a most cordial and hearty invitation to hold the next session of the Association in the City of Tacoma. When, some weeks ago, a committee was appointed by the local Bar Association, plans were somewhat discussed looking towards the meeting, if this convention should see fit to place it in Tacoma, and it is proposed by the members of the bar there to give the members of this State Association a splendid entertainment. It is proposed to ask that one day be added to the length of the convention and the Bar of Tacoma will furnish the visiting members an automobile ride up the mountain. It is proposed to have the business meetings of the Association in the City of Tacoma and, at its close, to take the members by automobile up the mountain and spend the night and the larger portion of the next day there, returning in the afternoon. I am satisfied, gentlemen of the convention, that if you will adopt this report, with the splendid man we have recommended to you for President and meeting at the City of Tacoma, we will get together in the City of Tacoma and forget the name of that mountain and give you a good time.

Mr. President, I desire to say further, on behalf of the delegation from Pierce County, that there appeared, some weeks ago or some days ago, in the daily press, an item purporting to come from Spokane or Olympia, announcing the candidacy of Mr. Grosscup, of our city, as incoming President of this Association, and in this connection I want to say to you that this announcement was not only unauthorized and it not only embarrassed the delegates from Pierce County, but also Mr. Grosscup. Mr. Grosscup occupies a high position

in the bar of this State and would consider the presidency of this Association as an honor, but we simply come here asking for the meeting and Mr. Grosscup was not a candidate and was perfectly surprised and regretted very deeply this announcement in the paper given, as it was, unauthorized by him or anyone from Pierce County.

Mr. Jones—Mr. President, the remarks of the gentleman from Pierce County create no surprise to the members present from King County except that he says they will forget the name of the mountain. It has been our view that they have always forgotten it.

Mr. President—Gentlemen, I think a motion would be in order instructing the Secretary to cast the ballot of the Association for each of the nominees in the report for the several offices.

Mr. Bates—I include that in my motion.

The motion was put and carried.

Mr. President—It is unanimously carried. Mr. Secretary, you will cast the ballot accordingly.

Mr. Secretary—Mr. President, I hereby cast the ballot of the Association for the gentlemen named in the report—and also for the person named as Secretary.

Mr. President—I concur in the suggestion that one day should be added to the time of the meeting next year. Under the constitution the meeting is to be held on the last Thursday in July, but I think the Executive Committee would entertain a suggestion from this Association that, in this particular case, they send out notices calling for the meeting to be held on Wednesday instead of Thursday, and I would like to have a motion to that effect.

Mr. Condon—I second the motion, Mr. President.

The motion prevailed.

Mr. President—The next order of business is "The Recall of Judges," by Hon. T. J. Walsh, of Helena, Montana.

Mr. Walsh—Gentlemen of the Washington Bar Association and Mr. President: I desire to express my grateful appreciation of the courtesy of the invitation extended by this Association, through its Secretary, to address its members on this occasion. I venture to hope that this may be the first of a series of interchanges that will tend to draw the bar of these two States respectively more closely together and contribute to the elevation of the professional spirit. (Applause at close of address. For address see Appendix).

Mr. President—I have been requested by Mr. Edge to announce, with reference to the excursion to Hayden Lake tomorrow, that all members of the State Association, all members of the local Association, and visiting attorneys, whether they are or are not members of either Association, are invited to go and to secure their tickets this afternoon from the Secretary of the local Association, and that there is no charge for the tickets.

I will ask Mr. Edge, President of the local Association, to take the chair for a few moments.

Mr. Edge assumes the chair.

Mr. Chairman—The next paper upon the program is entiled "The Ownership of Property in the States by the Federal Government. Whether as Sovereign or Proprietor," by the Hon. Russell L. Dunn, of the San Francisco bar.

Mr. Dunn—Mr. Chairman and Members of the Bar of

Washington: Before delivering my address, I would like to express my appreciation of the compliment you have done me in inviting me to address you. It was unexpected, and I trust that the contribution I make here will not come amiss. (Applause at close of address. For address see Appendix).

Mr. Chairman—The next upon the program is an address upon "The Late Edward Whitson," late United States District Judge for this district, by the Honorable W. T. Dovell, of Seattle, President-elect of this Association. (See Appendix.)

President Howard resumes the chair.

Mr. President—The next order on the program is the report of the Committee on Obituaries, Hon. John Arthur, of Seattle, chairman.

Mr. Arthur—Mr. President, I wish on this occasion to express my high appreciation of the good judgment of your Executive Committee in levying toll for this Association on other states of the Pacific Coast. Nothing could be finer nor more valuable than the contributions made at this meeting by the distinguished gentlemen from Montana, Idaho and California. My only regret is that you did not have a contribution from our sister state, Oregon. I hope the committee next year will have one, so that this will be properly a Pacific Coast Association rather than merely a Washington State Association. The two papers read this afternoon are exceedingly historically valuable, and the paper of Judge Dietrich this morning not only valuable in substance but of the highest literary quality, as the others were. I have one other suggestion to make in regard to the placing of topics. In nearly all well-governed bodies, except the Washington State Bar Association, the proceedings are opened with prayer, inducing in us seriousness of mind and it is an inspiration to act

well and nobly, havng always the fear of God in our souls, and, after the presiding officer's address, it is almost invariably the rule in those annual gatherings to treat the subject of necrology next, further to impress upon our minds the precariousness of life and the necessity of doing our best while we are allowed to live. Now, instead of that, your committee has so arranged that the most sorrowful part of the proceedings shall come at the end, making it hard for us to go away in a joyous spirit. I would suggest to the committee next year that the rule which obtains in well-governed and known Associations might profitably be followed. (See Appendix, Obituaries.)

Mr. President—Is there any unfinished business to come before the meeting at this time?

Mr. Cosgrove—I wish to introduce and move the adoption of the following resolution:

"Be It Resolved: That we hereby tender a sincere vote of thanks to the Spokane Bar Association for the splendid entertainment which has been prepared and carried out to the great pleasure of all the visiting members of this Association, and, further,

Be It Resolved; That this vote of thanks be communicated to the Spokane Bar Association and spread upon the minutes of the State Bar Association."

The motion received a second and was carried.

Judge Huneke—Mr. President, this may be new business. I was not in time yesterday to bring it before the Association, so I do so now. The suggestion that I wish to make I have prepared in the form of a resolution which I shall read and move its adoption. In brief, it refers to the unscientific manner in which our Washington State decisions are published. Before the Washington State decisions were published we received the decisions in advanced form in the Pacific Reporter.

All of you know that the Pacific Reporter advanced sheets bear the page and volume of the permanent bound volume and if lawyers desired to annotate any decision they could do so knowing that the page and volume given in the advance sheets would be found in the permanent volume. When the Washington decisions appear we find that the volume and page is not preserved in the permanent bound volume, so it is impossible for a lawyer to make permanent use of the decisions as published in the advance sheets. Now, it seems to me that this ought to be corrected. It seems to me that the advance sheets ought to be published in such a way that lawyers could make permanent use of the decisions as they appear.

Mr. President—Under the statement of the gentleman, the Chair will have to rule the motion out of order unless there be no objection to it. If there is objection, it will require a two-thirds vote to place it upon the calendar. Hearing no objection, he may proceed.

Judge Huneke—My suggestion, Mr. President, is this, that the simple numbering of decisions, as filed, would be given the cases and that number preserved from that time forth. This scheme, as you all do know, is in force in the Federal cases, the collections made by the West Publishing Company, in which cases are numbered consecutively, from one up and they are always cited by the number. Now, if that scheme were followed by every Supreme Court in the publishing of decisions, all this trouble would be obviated. I am not talking about the original filing of the case in the Supreme Court, but the filing of the decision. The moment a decision is filed it is given a number and that number is retained in the advance sheets and in the permanent volume, and so a case could be cited by the number, if you chose, or by the title of the

case. I might say, further, that, under the statute, it is my opinion that the Supreme Court has power to make this change and, acting upon that belief, I have repeatedly written to the members of the Supreme Court, but, for some reason, they have not seen fit to adopt this proposition. Now, there are several of them here, and I would like to know if there is any good reason opposed to it. I might say that this scheme is not original with me but it originated with Mr. West, of the West Publishing Company. He suggested that it be adopted by the different states, and it seems to me that our Washington State decisions ought to contain the page and volume of the permanent bound volume, or something ought to be done. Bearing on this I have written the following resolution:

Be it Resolved by the Washington State Bar Association: First. This Association favors the consecutive numbering of the decisions of the Supreme Court, in the order of their filing, to the end that from the time of first publication, they may become permanently useful to the practicing lawyer and the judges.

Second. We urge upon the Honorable Chief Justice and the Associate Justices of our Supreme Court the early adoption of this scheme of numbering the decisions of that court.

I move the adoption of the resolution.

Mr. President—I see one or two of the Judges of the Supreme Court here. We would be pleased to hear from them as to the method of numbering causes in the two departments.

Judge Crow—The only system of numbering our Supreme Court cases now is that of giving a number to the case when it is first filed. It appears on the appearance docket just as it does in the Superior Court. I recall the fact that Judge Huneke has called the attention of the court to this matter and, although I am a member of that body, I do not know that I can say that the court is especially opposed to it; in fact, they did not take any action touching the matter at

that time. There was some discussion given to it but nothing was done either favorably or unfavorably. Now, as I understand Judge Huneke—he explained it privately to me—he thinks if a system of numbering opinions as they came out could be adopted, and that numbering preserved, the case could always be known as Number, for instance, 521, no difference what report it might afterwards appear in, that is. in the permanent volume. Now, there has been no formal action taken on the matter by the Supreme Court, that I know of, and I think I would know it if there had been.

Mr. President—Are there any remarks on the motion?

Mr. Bates—I would like to ask if these advance sheets are official publications. My understanding is that the advance sheets are published by Bancroft, Whitney & Co.

Mr. President—And by Frank Pierce.

Judge Huneke—Is not the publication by Bancroft, Whitney & Co. made by statute?

Mr. Secretary—Yes sir; that is, the statute required the Reporter to enter into a contract for ten years. It was let to the lowest and best bidder and Bancroft, Whitney & Co. received the contract, and it has run five years now.

Judge Crow—Of course, the adoption of the scheme of Judge Huneke would necessitate two numbers for each case; the case number and the opinion number.

Mr. Rummens—Why not give the case number to the opinion also?

Judge Crow—The case numbers always appear at the top of the opinions, but not in consecutive order. Opinions are not written in the order in which the cases are filed.

Mr. Davis—Mr. President, I would just like to inquire this: What would be the scheme adopted where a rehearing opinion is filed in a case, say thirty days after the first opinion has been filed and between which times fifty opinions might have been filed? It seems to me it is more advantageous to have it as we now have it, an opinion on rehearing, filed even thirty days later than the original opinion, printed in the official reports immediately following the original case, than it would be to have it follow in its consecutive order, as would be necessary if you were to give it an independent number.

Mr. Christian—Mr. Chairman, a great many members of the Association are not here. I think this is practically new business and I do not think—

Mr. President—The Chair has already held that, but consent was given.

Mr. Christian—I move, as a substitute for the motion now before the house, that it be laid upon the table.

Mr. President—I do not want to get into this discussion, but I will just be irregular enough to suggest that there is some merit to this motion. At the same time, it involves procedure in the court and possibly affects an existing contract, and it seems to me the proper motion would be to refer it to the proper committee, which I think would be the Legislative Committee, with instructions to investigate and report to this Association whatever is advisable on the subject.

Judge Huneke—I am agreeable to that suggestion and would say, further, that any scheme that would be advisable to correct the existing defect would be satisfactory; for instance, if the paging in the advance sheets could be numbered so as to coincide with the permanent volume.

Mr. President—And you consent to substitute such motion for the motion you made?

Judge Huneke—Yes sir.

Mr. President—The motion is then before the house to refer this to the Legislative Committee with instructions to act in this matter.

The motion, having received a second, was put and carried.

Mr. Southard—In regard to extending our meeting next year to include four days instead of three, I remember it was mentioned at that time that, unfortunately for us, our Constitution provided for a three days' session. I think that matter was not disposed of.

Mr. President—Yes sir, it was; we temporarily amended the constitution by common consent, designating the last Wednesday, instead of the last Thursday in July as the date of the next meeting. The constitution does not limit the session to any number of days.

Mr. Southard—Very well.

Mr. President—This concludes what may be called the literary part of the program. Tomorrow our Association will be the guests of the local Association at Hayden Lake, after which this twenty-third annual convention of the Washington State Bar Association will stand adjourned.

FRIDAY EVENING

As guests of the Spokane Bar, the Association was escorted to Natatorium Park, where in seats reserved for us, we were most delightfully entertained by the Symphony Orchestra of New York. Later we were given tickets to the other places of amusement in the Park. The Joy Wheel was for the special use of the lawyers for several turns; the Shoots the Chutes received attention; the shooting galleries, ice cream and soda fountains, the swimming tank, and the ponies on the Merry-Go-Round, were all enjoyed and patronized by the otherwise serious, sedate and sober-minded limbs of the law. Though the lawyers were among the last to leave, the park authorities had no trouble; flirting was not successful. This was understood by most of us before starting, but, of course, there are some who must have an actual demonstration to be convinced. But we had a fine time anyway. Edge and Hamblin finally herded us homeward, so that we would be ready for the picnic the next day.

SATURDAY

All aboard for Hayden Lake! Three cars on the Spokane and Inland are loaded. Off we go! A beautiful day; a beautiful trip, up the rich valley of the Spokane, through gardens and orchard and wheat field! The Washington Idaho line is crossed, prohibition territory is reached and remains until we return. Post Falls and the prosperous and thriving city of Couer d' Alene are passed. Up and on through wood and field until at last our train switches around, describing the outline of a lawn tennis racket, stopping at the depot just before the description is completed, and we are at our destination, and intoxicated at the beauty and grandeur of our surroundings. (That's all).

The spirit of contention is ever afire in the breast of the lawyer, fee or no fee. Physical contest must take the place of forensic. Gandy wins the fat man's race. John C. Higgins wins the free for all. Now for base ball! And that was a ball game! Chadwick was umpire until mobbed. No umpire could keep the Spokane team from winning. The pitching and base running were the sensational features

of the game. Higgins again shows class. He and Edge could make Bender and Baker turn green with envy. Shaffer was an outfielder; that is, he was put in an old field away out by himself and told to stay there and not handicap either team by attempting to play. Terhune was captain for the visiting team. He made one or two sensational runs—away from the ball. The ball used was a very hard one. The back stops were the busiest. All the other players also made spectacular plays. The game finished with the score in dispute. Motion for new trial, appeal and petition for rehearing all denied.

Following the game a general pow wow was held at the north end of the Inn. Frank Graves, B. S. Grosscup, Judge Morris, and some of the other sager lights discussed with some of the lighter sages metaphysics, religion, "The Spirit of American Government," and other frivolous matters. Everybody was sober, though. Then "we et out on the porch," and a fine feed it was too. Then for home, not however, until some had enjoyed Hayden waters in bath or in boat.

We reached Spokane, perfectly sober yet, about six P. M. E. J. Cannon made Judge Rudkin and a few others believe the electric line was too slow and that in his auto lay the only safe route to the city, thirty miles away. By hiring two other automobiles for relays. some of them did reach Spokane by 7:30.

Here we parted and one of the most entertaining, profitable and successful annual gatherings of the Washington State Bar Association was brought to a close.

BAR ASSOCIATIONS

State Bar	President	Secretary
BAR ASSOCIATIONS Association.	W. T. Dovell Seattle	C. Will Shaffer Olympia
Adams County Bar Association.	G. E. Lovell Ritzville	John Truax Ritzville
Asotin County Bar Association.	Geo. W. Bailey Asotin	John A. Applewhite Asotin
Benton County Bar Association.	Bert Linn Prosser	M. M. Moulton Kennewick
Chehalis County Bar Association.	E. E. Boner Aberdeen	E. A. Philbrick Hoquiam
Chelan County Bar Association.	R. S. Ludington Wenatchee	B. J. Williams Wenatchee
Clarke County Bar Association.	A. L. Miller Vancouver	H. L. Parcel Vancouver
Cowlitz County Bar Association.	C. Kalahan Kalama	W. G. Drowley Kalama
Ferry County Bar Association	Charles P. Bennett Republic	Frank M. Allyn Republic
Garfield County Bar Association	E. V. Kuykendall Pomeroy	G. W. Jewett Pomeroy
Grant County Bar Association.	W. E. Southard Wilson Creek	O. A. Kuck Ephrata
Jefferson County Bar Association.	A. R. Coleman Port Townsend	U. D. Gnagey Pt. Townsend
King County Bar Association.	Orange Jacobs Seattle	John Arthur Seattle
Kittitas County Bar Association.	Austin Mires Ellensburg	C. R. Hovey Ellensburg
Lewis County Bar Association.	C. H. Forney Chehalis	C. A. Studerbaker Chehalis

Lincoln County Bar Association.	H. N. Martin Davenport	C A. Pettijohn Davenport
Okanogan County Bar Association.	Perry D. Smith Conconully	Wilson C. Gresham Conconully
Pacific County Bar Association.	John T. Welsh South Bend	Sol Smith South Bend
Seattle Bar Association.	Wm. H. Gorham Seattle	Chas. A. Spirk Seattle
Skagit County Bar Association.	J. C. Waugh Mt. Vernon	Dave Hammack Mt. Vernon
Snohomish County Bar Association.	J. Y. Kennedy Everett	Benj. W. Sherwood Everett
Spokane Bar Association.	Lester P. Edge Spokane	C. D. St. Morris, Spokane
Stevens County Bar Association.	W. H. Jackson Colville	Howard W. Stull Colville
Tacoma Bar Association.	W. Carr Morrow Tacoma	J. H. McMenamin Tacoma
Thurston County Bar Association.	Byron Millett Olympia	George R. Bigelow Olympia
Walla Walla County Bar Association.	W. H. Dunphy Walla Walla	W. B. Mitten Walla Walla
Whatcom County Bar Association.	T. G. Newman Bellingham	Alfred T. Black, Jr. Bellingham
Whitman County Bar Association.	John W. Mathews Pullman	H. M. Love Colfax
Yakima County Bar Association.	Ira P. Englehart North Yakima	D. V. Morthland North Yakima

APPENDIX

MEMBERSHIP 1911

New members indicated by 1

Abel, A. M. ..... Aberdeen
Abel, W. H. .....Yeon Bldg., Portland, Ore.
Abbott, W. H.....P. O. Box 355, Bellingham
Abrams, C. E. .....Bellingham
Abrams, J. B.....First Nat. Bank Bldg., Bellingham
Adams, B. B. 1.....1118 Paulsen Bldg., Spokane
Adams, J. B. .....Leavenworth
Albertson, R. B.....Superior Judge, Seattle
Alderson, Tom.....603 New York Block, Seattle
Alexander, J. B.....Mutual Life Bldg., Seattle
Allen, F. D. 1 .....1004 Paulsen Bldg., Spokane
Alston, C. G.....Amer. Nat. Bank Bldg., Everett
Anders, Will H.....Deputy Supreme Court Reporter, Olympia
Arntson, Anthony M.....Fidelity Bldg., Tacoma
Arthur, John.....New York Blk., Seattle
Ashton, Jas. M.....411 Fidelity Bldg., Tacoma
Askren, Wm. D.....914 Nat. Realty Bldg., Tacoma
Aust, Geo. F.....Boston Blk., Seattle
Avery, A. G.....Exchange Nat. Bank Bldg., Spokane
Bailey, H. Wade 1.....Colville
Ballinger, Harry .....529-533 Pioneer Bldg., Seattle
Ballinger, R. A.....Alaska Bldg., Seattle
Barnes, John G. .....Waterman
Barney, C. R.....313 New York Blk., Seattle
Barry, A. W. .....Riverside

Bartleson, Chas. J. .....Spokane
Bates, C. O. .....1107 Nat. Realty Bldg., Tacoma
Battle, Alfred.....901 Alaska Bldg., Seattle
Bausman, Frederick.....Hoge Bldg., Seattle
Baxter, Chauncey L.....539 New York Blk., Seattle
Beach, H. C.....P. O. Box 114, Bellingham
Beals, Walter B.....Haller Bldg., Seattle
Beatty, W. H.....Colman Bldg., Seattle
Bebb, Wm. B.....517 Mutual Life Bldg., Seattle
Beck, W. T. .....Spokane
Beebe, A. H.....710 Central Bldg., Seattle
Bell, Ralph C.....Prosecuting Attorney, Everett
Bell, W. P.....Superior Judge, Everett
Bell, A. B.....Deputy Prosecuting Attorney, Tacoma
Bennett, Burton E.....Pacific Blk., Seattle
Birdseye, L. J.1.....37 Zeigler Blk., Spokane
Birdsall, Wm. T. .....Spokane
Bixby, Frank.....Prosecuting Attorney, Bellingham
Black, W. W.....Superior Judge, Everett
Blaine, E. F.....307 Lowman Bldg., Seattle
Blair, John E. 1.....617 Hyde Blk., Spokane
Blake, Henry F.....431 Burke Bldg., Seattle
Blattner, F. S.....Nat. Bk. of Commerce Bldg., Tacoma
Boner, E. E.....Finch Bldg., Aberdeen
Boner, W. W.....Finch Bldg., Aberdeen
Booth, Robt. F.....Lowman Bldg., Seattle
Bostwick, S. A..... Everett
Boyle, Lon1.....Prosecuting Attorney, Prosser
Bradford, James E.....Corp. Counsel's Office, Seattle

Brady, Edward.....1308 Alaska Bldg., Seattle
Brandt, Emil J.....Lumber Exchange, Seattle
Brawley, Augustus.....Prosecuting Attorney, Mt. Vernon
Brents, Thos M.....Superior Judge, Walla Walla
Bridges, J. B. .....Aberdeen
Brockway, E. B.....Fidelity Bldg., Tacoma
Bronson, Ira.....Colman Bldg., Seattle
Brooks, J. W.....15-16 Dooley Bldg., Walla Walla
Brown, Ed J.....Starr-Boyd Bldg., Seattle
Brown, J. W.....314-16 North. Bk. & Trust Bldg., Seattle
Brown, L. Frank.....Pioneer Bldg., Seattle
Brown, L. H. 1.....804 Old Nat'l. Bank Bldg., Spokane
Brown, O. P. .....Clover Bldg., Bellingham
Brown, W. P. .....Bellingham
Brown, F. V.....King St. Station, Seattle
Brownell, F. H.....Henry Bldg., Seattle
Bruce, S. M. .....Bellingham
Brueggerhoff, Wm.....520-21 Central Bldg., Seattle
Bryan, James W. .....Bremerton
Bryson, Herbert C.....312 Drumheller Bldg., Walla Walla
Bundy, E. W.....Mutual Life Bldg., Seattle
Burke, Thomas.....408 Burke Bldg., Seattle
Burkey, C. P.....Nat. Realty Bldg., Tacoma
Burkheimer, John E.....New York Blk., Seattle
Butler, Marion A.....New York Blk., Seattle
Buxton, J. R.....Prosecuting Attorney, Centralia
Byers, Ovid A.....307 Colman Bldg., Seattle
Cain, Oscar.....U. S. District Attorney, Spokane
Callahan, James P. H.....Hicks Blk., Hoquiam

Cameron, Moncrieffe.....304 Central Bldg., Seattle
Campbell, F.....Provident Bldg., Tacoma
Campbell, John A. .....Seattle
Campbell, J. B. 1.....1124 Old. Nat. Bk. Bldg., Spokane
Campbell, J. D.....1109-10 Old Nat. Bank Bldg., Spokane
Campbell, W. E.....Prosecuting Attorney, Hoquiam
Canfield, H. W.....Traders' Blk., Spokane
Cannon, E. J.....Old Nat. Bank Bldg., Spokane
Cannon, John M. 1.....Ritzville
Card, E. N.....Superior Judge, Tacoma
Carey, Daniel H.....Superior Judge, Colville
Carkeek, Vivian M.....Am. Bank Bldg., Seattle
Carroll, P. P.....203 Maynard Bldg., Seattle
Chadwick, S. J.....Supreme Judge, Olympia
Chapman, William O.....Superior Judge, Tacoma
Cheney, B. G. .....Montesano
Chester, L. F.....G. N. Legal Dept., Spokane
Christian, Walter.....Nat. Realty Bldg., Tacoma
Cleland, Hance H. 1.....402 Hyde Blk.. Spokane
Clementson, Geo. H.....Pacific Blk., Seattle
Clifford, M. L.....Superior Judge, Tacoma
Clise, H. R.....New York Blk., Seattle
Cohn, Harry S. 1 .....419 Hyde Blk.. Spokane
Coiner, B. W.....Bankers Trust Bldg.. Tacoma
Cole, Geo. B.....Mutual Life Bldg.. Seattle
Cole, Irving T.....Boston Blk., Seattle
Coleman, A. R. .....Port Townsend
Colman, J. A. 1.....Everett
Coleman, Wilbra .....Sedro-Woolley

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Congleton, Chas. E.....911 Lowman Bldg., Seattle
Connor, E. O.....Old. Nat. Bk. Bldg., Spokane
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Cooley, H. D.....Wisconsin Bldg., Everett
Corbin, E. N. .....Coupeville
Cosgrove, H. G.....817-23 Alaska Bldg., Seattle
Craven, A. J. .....Bellingham
Cross, Emerson A. .....Aberdeen
Cross, Daniel T. 1.....Prosecuting Attorney, Ephrata
Crow, Denton M.....605 Jamieson, Spokane
Crow, Herman D.....Supreme Judge, Olympia
Cunningham, Fred J. 1.....1220 Old Nat. Bk. Bldg., Spokane
Cushman, E. E.....U. S. Dist. Judge, Juneau, Alaska
Cutting, S. H. 1 .....1022 Paulsen Bldg., Spokane
Daly, A. J.....Leary Bldg., Seattle
Darch, W. F.....Box 265 Goldendale
Davidson, J. B. .....Ellensburg
Davis, Allen S. .....North Yakima
Davis, Arthur W. 1.....41-45 Zeigler Blk., Spokane
Davis, Robert M.....Fidelity Bldg., Tacoma
Dawson, W. S. .....Spokane
Day, E. M. .....Bellingham
Day, Vince A. 1.....1112 Paulsen Bldg., Spokane
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Devers, R. A.....New York Blk., Seattle
Dewart, F. M.....Old Nat. Bk. Bldg., Spokane
Dobbs, Chas. J.....1062-3-4 Empire Bldg., Seattle
Donworth, Geo.....U. S. Federal Judge, Seattle
Dorety, F. G. 1.....King St. Station, Seattle
Dorr, C. W.....375 Colman Bldg., Seattle
Douglas, J. F.....711-14 White Bldg., Seattle
Douglas, James H.....711-14 White Bldg., Seattle
Dovell, W. T.....Colman Bldg., Seattle
Dow, Lorenzo.....Nat. Bank of Com. Bldg., Tacoma
Dowd, James B.....Pioneer Bldg., Seattle
Drain, James A.....1502 H. St., N. W., Washington, D. C.
Drain, Dale D.....615 Hyde Bldg., Spokane
Dudley, F. M.....White Bldg., Seattle
Dunphy, W. H. 1.....Walla Walla
Dunbar, R. O.....Supreme Judge, Olympia
Duryee, Schuyler.....Stokes Bldg., Everett
Earle, Dan.....Seattle
Esterday, J. H.....Nat. Realty Bldg., Tacoma
Edge, Lester P.....Hyde Blk., Spokane
Edsen, Edward P.....300-2 Maynard Bldg., Seattle
Ellis, O. G.....Supreme Judge, Olympia
Emerson, W. M.....Chelan
Emmons, R. W.....New York Blk., Seattle
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Eshelman, Carl E.....Calif. Bldg., Tacoma
Eskridge, Richard Stevens.....Colman Bldg., Seattle

Falknor, A. J.....Seattle Electric Co. Bldg., Seattle
Farrell, C. H.....Central Bldg., Seattle
Faucett, R. J.....206-7 Stokes Bldg., Everett
Fay, John P.....New York Blk., Seattle
Featherkile, D. W. .....Bellingham
Felger, W. W.....Dexter Horton Bldg., Seattle
Field, H. H.....White Bldg., Seattle
Fisk, T. P. .....Shelton
Fitch, J. F.....Bankers Trust Bldg., Tacoma
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Flood, Ernest M.....Peyton Bldg., Spokane
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Fogg, Edward.....Calif. Bldg., Tacoma
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Fouts, Chas. M.....Hinckley Bldg., Seattle
Foutz, Will H.....Old Nat. Bank Bldg., Spokane
Frater, A. W.....Superior Judge, Seattle
Frost, J. E.....State Tax Commissioner, Olympia
Fullerton, Mark A.....Supreme Judge, Olympia
Fulton, Walter.....Mutual Life Bldg., Seattle
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Gill, Hi.....Colman Bldg., Seattle
Gilliam, Mitchell.....Superior Judge, Seattle
Girand, F. W. 1.....402-3 Empire State Bldg., Spokane
Gleason, S. Chas.....Burke Bldg., Seattle
Gnagey, U. D. .....Port Townsend
Godrey, James J.....Lowman Bldg., Seattle
Godman, M. M. .....Seattle
Gordon, Carroll.....Capitol Bldg., Olympia
Gorham, W. H.....Box 263, Seattle
Gose, C. C. .....Walla Walla
Gose, M. F.....Supreme Judge, Olympia
Graham, E. A. .....Aberdeen
Granger, H. T.....New York Blk., Seattle
Graves, Carroll B.....Lowman Bldg., Seattle
Graves, Will G.....1230 Old Nat. Bank Bldg., Spokane
Green, J. Lindley .....Ass't U. S. Att'y, Seward, Alaska
Greene, Roger S.....Burke Bldg., Seattle
Greene, R. W. .....Bellingham
Griffiths, Frank S.....619-21 Alaska Bldg., Seattle
Griggs, H. S. .....1115 Fidelity Bldg., Tacoma
Grimshaw, W. A.....Superior Judge, Wenatchee
Grinstead, F. Leo 1.....Colville
Grinstead, Loren.....314-16 Colman Bldg., Seattle
Griswold, W. J. .....Bellingham
Grosscup, B. S.....Bank of Cal. Bldg., Tacoma
Guie, E. H.....810 Leary Bldg., Seattle
Guie, J. A.....810 Leary Bldg., Seattle

Hadley, H. E.....375 Colman Bldg., Seattle
Hadley, A. M.....Mason Bldg., Bellingham
Hadley, L. H.....Mason Bldg., Bellingham
Haight, Jas. A.....Haight Bldg., Seattle
Hall, Calvin S.....Alaska Bldg., Seattle
Halverstadt, D. V.....Alaska Bldg., Seattle
Hamblin, L. R.....Paulsen Bldg., Spokane
Hanford, C. H.....U. S. Dist. Judge, Seattle
Hanford, E. C.....Burke Bldg., Seattle
Happy, Cyrus.....Hyde Blk., Spokane
Hardin, E. E.....Superior Judge, Bellingham
Hardman, Max .....Seattle
Harmon, U. E.....Berlin Bldg., Tacoma
Harriman, Henry R.....New York Blk., Seattle
Harris, Chas. P.....Lowman Bldg., Seattle
Hart, John B.....Am. Bank Bldg., Seattle
Hartman, John P.....Burke Bldg., Seattle
Hartson, M. T.....Federal Bldg., Tacoma
Harvey, Walter M.....Nat. Realty Bldg., Tacoma
Hastings, H. H. A.....Haller Bldg., Seattle
Hathaway, Howard.....Am. Nat. Bank Bldg., Everett
Hayden, E. M.....Perkins Bldg., Tacoma
Hayden, W. H. .....Fidelity Bldg., Tacoma
Healey, T. D. J. .....Bellingham
Heath, Sidney Moore .....Hoquiam
Heaton, O. G.....339 New York Blk., Seattle
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Herman, David 1.....518 Hyde Blk., Spokane
Herr, Willis B.....Leary Bldg., Seattte

Heyburn, W. B.....U. S. Senate, Washington, D. C.
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Higgins, Thos. B.....P. O. Box 2193, Spokane
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Hindman, W. W.....Hyde Blk., Spokane
Hodgdon, C. W. .....Hoquiam
Hodge, G. J. .....Seattle
Holbrook, Paul.....756 New York Blk., Seattle
Holcomb, O. R.....Superior Judge, Ritzville
Holt, R. S.....403-5 Berlin Bldg., Tacoma
Horan, J. E.....Wisconsin Bldg., Everett
Hovey, C. R.....Honululu Blk., Ellensburg
Howard, C. W.....First Nat. Bank Bldg., Bellingham
Howe, James B.....Pioneer Bldg., Seattle
Hoyt, John P.....U. S. Referee in Bankruptcy, Seattle
Hubbard, H. Frank .....Wenatchee
Hughes, E. C.....Colman Bldg., Seattle
Hughes, H. DeHart.....Colman Bldg., Seattle
Hughes, P. D. .....Burke Bldg., Seattle
Hulbert, Robt. A.....901 Alaska Bldg., Seattle
Hull, H. L. .....North Yakima
Humphrey, W. E.....Congressman, Seattle
Humphries, John E.....Mutual Life Bldg., Seattle
Huneke, Wm. A.....Superior Judge, Spokane
Hurd, M. P. .....Mt. Vernon
Hurlbut, Chas. H. .....Bellingham
Hutchinson, R. G. .....Seattle
Hutson, Chas. T.....530-3 Pioneer Bldg., Seattle

Imus, A. H. .....Kalama
Irwin, L. J. .....Friday Harbor
Irwin, Mason .....Superior Judge, Montesano
Jacobs, B. F.....Bankers Trust Bldg., Tacoma
Jackson, W. H. 1.....Bk. of Colville Bldg., Colville
Jeffers, Clyde G. 1.....Wilson Creek
Jesseph, L. C. .....Colville
Joab, Albert E.....508-10 Equitable Bldg., Tacoma
Johnstone, H. R. .....Portland, Ore.
Joiner, Geo. A.....Superior Judge, Mt. Vernon
Jones, Caleb 1.....511 Hyde Blk., Spokane
Jones, Rich. S.....Colman Bldg., Seattle
Jones, W. L.....U. S. Senator, North Yakima
Jones, L. N. .....Arlington
Kalb, Ernest L. .....Kennewick
Kauffman, Ralph.....Superior Judge, Ellensburg
Keith, W. C.....Starr-Boyd Bldg., Seattle
Kelleher, John.....436 Burke Bldg., Seattle
Kelleran, S. H. 1.....Asst. Atty. General, Olympia
Kellogg, J. A.....Superior Judge, Bellingham
Kellogg, J. A.....Bailey Bldg., Seattle
Kemp, Fred .....Wenatchee
Kennan, H. L.....Superior Judge, Spokane
Kennedy, J. Y. .....Everett
Kerr, James A.....Mutual Life Bldg., Seattle
Kimball, H. L. 1.....1219 Old Nat. Bk. Bldg., Spokane
Kindall, J. W. .....Bellingham
Kizer, B. H. 1 .....1230 Old Nat. Bk. Bldg., Spokane
Kleber, John C.....Hyde Blk., Spokane

Koehler, Augustus J. ..... Tacoma
Korte, Geo. W. ..... 608 White Bldg., Seattle
Kreite, Edward C. ..... Alaska Bldg., Seattle
Kuykendall, E. V. ..... Pomeroy
Laffoon, R. F. ..... Chamber of Commerce Bldg., Tacoma
Lambert, R. S. ..... Sumas
Lambuth, W. D. ..... Pacific Blk., Seattle
Lane, W. D. ..... 711-14 White Bldg., Seattle
Langhorne, M. A. ..... Perkins Bldg., Tacoma
Langhorne, W. W. ..... Chehalis
Lanning, Will ..... Aberdeen
Larrabee, John ..... 1022 Aaska Bldg., Seattle
Latcham, F. A. ..... Fidelity Bldg., Tacoma
Laughan, A. J. ..... Zeigler Blk., Spokane
Lavin, Joseph J. ..... Zeigler Blk., Spokane
Lee, Geo. A. ..... State Public Service Commissioner, Olympia
Leehey, Maurice D. ..... Alaska Bldg., Seattle
Lehman, Robt. B. ..... Tacoma
Levy, Aubrey ..... 307 Lowman Bldg., Seattle
Leuders, Henry W. ..... Bank of Calif. Bldg., Tacoma
Linck, John W. ..... Calif. Bldg., Tacoma
Locke, D. W. ..... Everett
Livesey, George ..... Bellingham
Loutitt, Geo. W. ..... 18 Realty Blk., Everett
Love, C. M. Nelson ..... Wilbur
Lovell, G. E. ..... Ritzville
Ludington, R. S. ..... Wenatchee
Lund, C. P. ..... The Rookery, Spokane
Lund, Edna B. ..... Bernice Bldg., Tacoma

Lund, R. H.....Bernice Bldg., Tacoma
Lung, Henry W.....409 Burke Bldg., Seattle
Lyons, Chas. S.....Nat. Realty Bldg., Tacoma
Lyter, M. M.....New Arcade, Seattle
Macbride, Philip D. 1.....Hoge Bldg., Seattle
MacDonald, E. C.....Asst. U. S. Dist. Atty., Spokane
Main, John F.....Superior Judge, Seattle
Martin, Wm.....Collins Blk., Seattle
Mattison, Thos.....Berlin Bldg., Tacoma
McCafferty, James J.....Lowman Bldg., Seattle
McCarthy, Joseph1.....402 Hyde Blk., Spokane
McClinton, James G. .....Port Angeles
McClure, Walter A.....1509 Hoge Bldg., Seattle
McCord, E. S.....Mutual Life Bldg., Seattle
McCormick, W. L.....Tacoma Bldg., Tacoma
McCrosky, R. L. .....Colfax
McCroskey, W. E. 1 .....Palouse
McDaniels, John H. .....Ellensburg
McFadden, Thos. L. .....Bellingham
McGilvra, O. C.....Burke Bldg., Seattle
McKay, T. H.....421-3 Finch Bldg., Aberdeen
McLain, Henry A.....Empire Bldg., Seattle
McLaren, W. G.....715 New York Blk., Seattle
McLeod, W. A. .....Port Orchard
McMaster, Donald.....Superior Judge, Vancouver
McMenamin, J. H.....Fidelity Bldg., Tacoma
McMicken, Maurice.....Colman Bldg., Seattle
Meade, A. E. .....Bellingham
Meier, Walter F.....710 New York Blk., Seattle

Meigs, L. O. .....North Yakima
Mendenhall, Mark F.....Exchange Nat. Bank, Spokane
Merritt, H. D. .....Spokane
Merritt, J. W. 1.....1224 Old Nat. Bk. Bldg., Spokane
Merritt, Seabury.....1224 Old Nat. Bank Bldg., Spokane
Miller, Chester F.....Superior Judge, Dayton
Miller, Fred .....Hyde Blk., Spokane
Million, E. C.....Hoge Bldg., Seattle
Mires, Austin .....Ellensburg
Mitchell, John R.....Superior Judge, Olympia
Moore, Ben L. .....Seattle
Moore, H. D.....New York Blk., Seattle
Moore, W. Hickman .....Seattle
Morgan, F. L. .....Hoquiam
Morris, Geo. E.....Supreme Judge, Olympia
Morrow, W. C.....Bk. of Cal. Bldg., Tacoma
Moser, B. B.....Haller Bldg., Seattle
Mount, Wallace.....Supreme Judge, Olympia
Munday, Chas. F.....P. O. Box 1813, Seattle
Munn, Geo. Ladd.....Alaska Bldg., Seattle
Munter, Adolph.....Peyton Bldg., Spokane
Murphine, Thos. F.....New York Blk., Seattle
Murphy, Jas. B.....Lowman Bldg., Seattle
Murray, Chas. A.....Headquarters Bldg., Tacoma
Murray, S. G.....Arcade Annex, Seattle
Myers, H. A. P.....Superior Judge, Seattle
Nash, Frank D.....500 Bk. of Cal. Bldg., Tacoma
Neal, C. H. .....Conconully
Neal, Frank C.....Fidelity Bldg., Tacoma

Neal, Fred W. .....Bellingham
Nelson, Lewis J. .....Leavenworth
Neterer, Jeremiah .....Bellingham
Newman, T. G.....First Nat. Bk. Bldg., Bellingham
Nichols, J. W. A.....504 Bk. of Cal. Bldg., Tacoma
Noon, Henry S.....New York Blk., Seattle
Norris, H. F.....614-16 Fidelity Bldg., Tacoma
Nuzum, R. W.....Old Nat. Bank Bldg., Spokane
Ogdon, R. D.....Colman Bldg., Seattle
Oldham, Robt. P.....Hoge Bldg., Seattle
Onstine, Burton J.....Paulsen Bldg., Spokane
Oswald, Hugo E. 1.....1224 Old Nat. Bk. Bldg., Spokane
Padgett, H. E. .....Everett
Palmer, E. B. .....Lowman Bldg., Seattle
Parker, Alfred E.....Alaska Bldg., Seattle
Parker, Emmett N.....Supreme Judge, Olympia
Parker, Fred .....North Yakima
Parker, John R.....Starr-Boyd Bldg., Seattle
Parr, H. L. .....Olympia
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Patterson, Chas. E.....Bailey Bldg., Seattle
Pattison, John .....Spokane
Pattison, Paul 1.....Prosecuting Attorney, Colfax
Peacock, John A.....Fernwell Bldg., Spokane
Peck, H. E.....Junction Bldg., Ballard
Pedigo, John H.....601-3 Baker Bldg., Walla Walla
Pelletier, John H.....The Rockery, Spokane
Pemberton, W. H. .....Bellingham

Perringer, Virgil .....Bellingham
Pendergast, E. K.....Superior Judge, Conconully
Perry, John H.....Washington Bldg., Seattle
Peters, W. A.....546 New York Blk., Seattle
Peterson, Fred H.....Hoge Bldg., Seattle
Peterson, N. S.....New York Blk., Seattle
Phelps, Harry E.....Bankers Trust Bldg., Tacoma
Phipps, Harve H. 1.....610 Hyde Blk., Spokane
Pickrell, J. N. .....Colfax
Piles, S. H.....Burke Bldg., Seattle
Pinckney, John J.....Home State Bk. Bldg., Blaine
Place, Victor M.....800 Leary Bldg., Seattle
Plummer, W. H. 1 .....1202 Old Nat. Bk. Bldg., Spokane
Post, Frank T.....Exchange Nat. Bank Bldg., Spokane
Powell, J. H.....New York Blk., Seattle
Prather, L. H.....Hyde Blk., Spokane
Pratt, Peter L.....734 Central Bldg., Seattle
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Ryan, John E.....1311-13 Alaska Bldg., Seattle
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Scott, W. D.....310-14 Fernwell Bldg., Spokane
Seabury, I. H. .....Sedro-Woolley
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HON. C. W. HOWARD

PRESIDENT'S ADDRESS

In the formation of our present system of government, both national and state, and under which we have grown to be the most prosperous and powerful people on the face of the globe, none rendered more efficient and patriotic service than the lawyers. That they do not possess the same influence in governmental matters at this time, is due partly to the complex nature of our present civilization, which has withdrawn many of our brilliant members from the public councils to the service of private interests, often justly claimed to be in conflict with those of the public. Again, some of our profession, inspired by the lust of office, have become too prone to be regarded as leaders in movements for the time being supposedly popular, but which in the end usually result in disaster to the public welfare. Taken as a class, however, I believe that there is no body of men more devoted to their country, or who entertain a greater reverence for its institutions and laws than the lawyers.

Mindful of our country's history, and inspired by devotion to its interests, this association was formed. Among the objects of which are: to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the profession of law, and to cultivate and encourage cordial intercourse among the lawyers of the State of Washington.

In furtherance of some of these objects, our by laws impose upon the president the duty, in his annual address, of reviewing statutory changes of public interest in the state.

The last legislature submitted to the people the question whether statutory initiative and referendum shall be provided for in the organic law of the state. The act does not authorize amendments to the constitution by the initiative, but pertains to the enactment, or repeal, of statutory laws.

There is possibly no subject of current thought or legislation so much misunderstood by both the advocates and opponents thereof, as the initiative and referendum. Many of its advocates conceive the notion that this is a new and untried panacea for all the political ills which government among men is heir to. On the other hand, many of its opponents entertain the conviction that this method of

legislation was first suggested in the populist platform at the convention held in Omaha some eighteen years ago.

Each is in error, as the application of the principle of the initiative and referendum is older than the history of legislation in America, is recognized, to more or less extent, in every state in the Union, and is of familiar and frequent application in the legislative history of this state.

The constitution of the State of Washington, while drafted by a convention, was not promulgated by it, but was adopted by a vote of the people. At the same election the question of woman's suffrage, state-wide prohibition, and permanent selection of the seat of government were respectively submitted to the voters for their determination. It is impossible to amend our constitution without the affirmative vote of a majority of the electors voting thereon. Nor can any convention be held to draft a new constitution without authority from the voters of the state; nor can any constitution drafted by such new convention have any force or validity until the same shall have been submitted to and adopted by the people. These respective provisions recognize to the fullest extent the principles of the initiative and referendum. Nor were these provisions incorporated into our constitution by chance, but came there advisedly and as the result of years of constitution making in America.

Many of the earlier constitutions of the different states of the Union were drafted and proclaimed by the act of constitutional conventions, which conventions were neither initiated by the people, nor the work thereof ratified by a vote of the people. The first popular initiated and ratified constitution in America was that of Massachusetts, in the year 1780. In the constitutions of the New England states and some of the Southern states we first find the fullest development of the principle that in the enactment of the fundamental law the people must be consulted, both as to the propriety of having a constitution at all, and of ratifying, or rejecting, the work of the convention which drafted the same.

Under section 6 of article VIII. of our constitution, no debt beyond a certain limit can be incurred by municipalities without the consent of three fifths of the voters thereof, and the plan of submitting to the decision of the voters numerous questions, such as pertain to the construction of schools, the changing of county seats, the incorporation of cities, the construction or purchase of municipal utilities of various kinds, local option in liquor matters, and many others that could be mentioned are of so frequent and common occurrence among us, and in many other states, as to excite little comment or attention.

Beginning with South Dakota in 1897, the initiative and referen-

dum has been extended to general legislation in South Dakota, Arkansas, Utah, Oregon, Missouri, Maine, Oklahoma, Colorado, Montana and Arizona. It is advisory in Delaware. It is now before the people for enactment in California, North Dakota, Wisconsin, Idaho, Wyoming, Nebraska and Washington. Proposals to submit it have been defeated in ten other states. Nevada and New Mexico have the referendum.

In America this principle of control by the people is traceable to very early conditions in the history of the New England states, and in some of the Southern states. It came from the old folkmoots, or town meetings, and it is well worth remembering that in many of these meetings, as well as in the guilds of England which preceded them, all qualified to belong were compelled to be members and were by fine, or other appropriate penalty, obliged to attend the meetings and participate in the deliberations thereof.

In 1638 the town of Portsmouth, Rhode Island, by popular vote, enacted the following by-law, which is submitted as an example of many of like import existing in other towns:

"It is ordered that if any of the Freemen of this Body shall not repair to the publick meetings to treate upon the publick affairs of the Body upon publick warning (Whether by beate of the Drumm or otherwise) if they fayle one-quarter of an houre after the second sound, they shall forfeitt twelve pence; or if they depart without leave they are to forfeitt the same summ of twelve pence."

These assemblies were later imitated in Illinois, Indiana, Iowa, Oregon and California; in fact in the early history of every state. They are the natural outgrowth of frontier life in remote communities separated from centralized authority.

I merely refer in the most cursory manner to the history of this subject with a view of allaying alarm on the one hand, or too much eagerness on the other, to view the initiative and referendum as a new and untried principle in legislation.

It would be instructive and exceedingly interesting to trace the history of these early assemblies of the people through the period of popular enactment and ratification of laws, and the reasons for this system falling into disuse and the substitution of the delegate system therefor. To do so, however, would unduly prolong this paper, and I refer you for a comprehensive review of the entire subject to "The People's Law,' by Charles Sumner Lobingier, published in 1909 by the Macmillan company.

There is therefore nothing new, novel or alarming in the mere statement that a given state has recognized the principle of the initiative and referendum, since there is not a state in the Union that at

some period of its existence has not lived under a constitution at least enacted by the referendum, excepting the State of Delaware, and that state at this time has a statutory advisory initiative and referendum.

The question, however, of immediate and paramount importance is whether or not it is wise to extend the application of this principle to the entire field of legislation, or limit it in this state, as heretofore, to constitutional matters and to legislative questions as are of such general or local importance as to challenge public attention and insure sufficient interest being taken therein on behalf of the voters to which the question is submitted that a fair and impartial expression of opinion will be obtained.

While the proposed change in our constitution permits a law to be initiated on the petition of ten per cent of the number voting for governor at the preceding election, and to be referred on like petition of six per cent., but in no case more than fifty thousand to be required to initiate, or more than thirty thousand to refer; the vote cast upon each question or measure, however, to equal one-third of the total votes cast at the election; and while it is provided that the legislature, in case the amendment be adopted, shall provide for the publicity of proposed measures, it is a grave question whether it will be the part of wisdom for the people of this state to adopt the proposed amendment. Our state not only covers a vast area, but is one of great diversity in resources, and it is but human nature for people to take little or no interest in that which is everybody's business unless it affects them in some particular manner so as to challenge their minute attention to the same.

This condition does not prevail in matters of universal concern, such as in the ratification or rejection of a constitution, or in the choosing of delegates to a state convention to frame a constitution. As stated by Ambassador Bryce, in the American Commonwealth:

"The appointment of a constitutional convention is an important event, which excites general interest in a state. Its functions are weighty and difficult, far transcending those of the regular legislature. Hence the best men in the state desire a seat in it, and, in particular, eminent lawyers become candidates, knowing how much it will affect the law they practice. It is therefore a body superior in composition to either the senate or the house of a state. Its proceedings excite more interest; its debates are more instructive; its conclusions are more carefully weighed."

But this situation is not true as to every law that may be proposed; in fact, it applies to very few of them. If some plan could be devised as in the ancient guilds and town meetings to compel every

elector to go to the polls and vote, we would undoubtedly have an expression of sentiment which would represent the average wish and intelligence of the state, at least so far as it is possible for electors to advise themselves concerning matters of remote bearing and interest to their immediate community. On the other hand this law would compel all to become actively interested in every proposed enactment, or suffer the consequences of their neglect to do so.

We were told that the direct primary would result in the selection by the people of competent, impartial, and fearless advocates of their interests, and since that law is now in effect, there can be consistently no claim that the people will not be fully represented by their members in the legislature.

The principal inherent vice in all initiative and referendum legislation lies in the fact that it must be adopted, or rejected, as proposed. It furnshes nc opportunity for the inter change of ideas, which is always fruitful ot a fuller and better understanding of the subject. This is the prime virtue of constitutional conventions, and the reason that the result of their labors is so generally indorsed by the people, is the fact that discussion, suggestion and mutual concession has perfected the idea which all wish to attain, but which few are competent to draft unaided by suggestion from others. The reason that a senate and house of representatives were provided, instead of one legislative body, was for the purpose of further conserving this opportunity for the interchange of ideas.

The courts have frequently held acts of the directors of private corporations void, where the directors have decided upon a given course by separately agreeing thereto not in a meeting at which all or a majority were present. The reason assigned is that no opportunity was thus afforded for mutual deliberation. If this opportunity is so beneficial in the management of corporate affairs as to require action taken in tne absence thereof to be held void, how much greater the necessity in applying such rule in the management of the affairs of a great state.

Another inherent vice in this method of legislation is to be found in the fact that since a measure may be enacted or defeated by a majority of the votes registered thereon, it will not infrequently happen that through lack of general interest in the subject matter of the legislation, the same may be enacted or defeated by less than a majority of the voters who participated in the general election, since, under the proposed amendment only a majority of those voting upon the subject is required to enact or reject a law if one-third of the votes cast in such election be registered on the measure; that is, seventeen per cent. of the vote may enact or reject a law.

Under the proposed amendment no act, law, or bill, excepting such as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, shall take effect until ninety days after the adjournment of the session at which it is enacted. This, except as to the matters mentioned, deprives the legislature of putting any law into immediate force, regardless of the emergency existing therefor. But that is not all, regardless of the emergency and necessity for the act and irrespective of whether it may have been enacted in response to an overwhelming demand by the people therfor, it is within the power of a small minority consisting of only six per cent. of the vote cast for governor, to hold up such law without other act than the filing of a referendum petition. Unless a special session of the legislature is called to submit such law to a special election of the people. the state can thus be deprived of the benefit of such enactment for a period approximating twenty months, and that, too, notwithstanding that at such election it may be approved by an overwhelming majority of the voters of the state. The experience of the University of Oregon on two separte occasions illustrates the entire probability of meritorious measures thus being held up.

In Oregon the constitution may be amended by a vote on initiative petition the same as statutory law may be enacted. As this state has had the widest experience of any in this species of legislation, you will be interested in and instructed by reading the address of Hon. Frederick V. Holman, late president of the Oregon Bar Association, delivered at its annual meeting, November 15, 1910, at Portland, Ore., and also his address on "Results in Oregon," delivered February 4, 1911, at Civic Federation of Chicago banquet. Mr. Holman treats the entire subject from a lawyer's standpoint, and his observations and conclusions should be carefully read by every voter in this state. The closing paragraph of his latter address is as follows:

"Briefly to summarize, then, we find that the so-called 'reserve' power is greatly abused; that measures in overwhelming numbers and many of them loosely drawn are being put upon the ballot; that the percentage of those who do not participate in direct legislation is increasing; that lack of intelligent grasp of many measures is clearly indicated; that legislation is being enacted by minorities to the prejudice of the best interests of the majority; and that the constitution itself is being freely changed with reckless disregard of its purpose and character."

The recent history of constitution-making in Mississippi, South Carolina, Delaware, Louisiana, Kentucky and Virginia illustrates the

wisdom of proceeding cautiously in the matter of the enactment of laws by universal franchise. While each of the states last mentioned, with the exception of Delaware, had until recent years constitutions enacted by the vote of the people of the state, conditions have arisen which impelled the people of these states to reverse their political hisory and to return to the system of framing and promulgating constitutions by the act of constitutional conventions without submission of the same for ratification to the vote of the people. This may be clearly styled a retrogression from the principle of popular government by the people. Whatever the peculiar local conditions there may have been which induced the people of these states to this course, the fact that they felt obliged to take such course is a sufficient warning that the abuse of power by ignorance, indifference, or whatever other reason may be assigned, is possible under unlimited participation in law making.

The present agitation for a return to the ancient and discarded principle of the enactment of statutory law by a vote of the people finds no basis or justification in the recent political history of this state. I know of no popular demand for legislation of any character, excepting the reapportionment bill, that has not found a ready response from the legislature of the state, and under the primary system of nominating members to that body, I can see no excuse for any contention that it will not in the future continue to represent the wishes of the people.

It was attempted at the last session of the legislature to meet the requirements of the constitution by making a new apportionment as to senators and representatives. It being impossible to agree upon a measure, none was passed. We might as well be frank among ourselves and concede the real reason for the failure of the passage of any such measure. The large centers of population were anxious for the passage of such a law, for the reason that it would result in giving them greater local representation in one, or both, bodies of the legislature. The more sparsely settled portions of the state were opposed to the passage of such a law, because it would correspondingly reduce their existing legislative influence. Now, the strange inconsistency in this matter is this: the sparsely settled communities whose representation by the reapportionment would be correspondingly reduced in legislative influence were opposing the apportionment bill for this reason, while on the other hand they were favoring the initiative and referendum measures, which would work exactly to the same end as the reapportionment. As the matter now stands, the agricultural counties of Eastern Washington have much greater proportionate influence in the legislature, through their representa-

tives, than they will have if the legislative equation is transformed to the electoral vote of the state, and I predict now that if the initiative and referendum amendment is adopted and used to any considerable extent, it will result in the control of the state going to a combination of voters in the large cities, to the ignoring of the wishes of the agricultural communities.

The legislature of 1909 submitted, and at the election in 1910, the people ratified, an amendment to our constitution granting to women the right of suffrage. It might be the part of wisdom to give these newly enfranchised electors a little experience in voting for candidates before imposing upon them the additional onerous duty of directly participating in the enactment or rejection of the statutory law of the state.

In the last year and a half, there has arisen an organization known as the "Short Ballot Organization," with which the so-called reform movement is in full accord. The "short ballot" principle is defined by this organization, as printed in the January, 1911, issue of "Equity" (a publication devoted to direct legislation record, the referendum news, and the proportional representation review), as follows:

"The dangerously great power of politicians in our country is not due to any particular civic indifference of the people, but rests on the fact that we are living under a form of democracy that is so unworkable as to constitute in practice a pseudo-democracy. It is unworkable because

"First—It submits to popular election offices which are too unimportant to attract (or deserve) public attention; and,

"Second—It submits to popular election so many offices at one time that many of them are inevitably crowded out from proper public attention; and,

"Third—It submits to popular election so many offices at one time that the business of making up the elaborate tickets necessary at every election makes the political machine an indispensable instrument in electoral action.

"Many officials, therefore, are elected without adequate public scrutiny, and owe their selection not to the people, but to the makers of the party ticket, who thus acquire an influence that is capable of great abuse.

"The 'short ballot' principle is:

"First—That only those offices should be elective which are important enough to attract (and deserve) public examination.

"Second—That very few offices should be filled by election at one time, so as to permit adequate and unconfused public examination of the candidates."

It is difficult to comprehend why each proposition above outlined is not applicable to the initiative and referendum in statutory matters. Laws too unimportant to attract or deserve public attention may be so submitted. It is entirely possible and probable that so many laws may be submitted at one time that many of them will inevitably be crowded out from proper public attention, so that many laws thus may be enacted without adequate public scrutiny, and owe their enactment not to the people but to the makers and framers of such laws, who thus acquire a legislative influence that is capable of great abuse. If we are to draw any analogy from the suggestions of this organization, it is that only matters of a constitutional nature, or those sufficiently important to attract and deserve public examination, such as are already provided for in the laws of this state, should be subject to initiative and referendum control, and that only such few important measures should be submitted at one time as to permit of adequate and unconfused public examination of the same. It must everywhere be conceded that the vote for candidates is larger than for measures submitted at the same election. Hence any reasons calling for restrictions on voting for candidates, must apply with even greater force to voting upon measures.

The last federal census gave the State of Washington the largest per centage of increase in population of any state in the Union. While undoubtedly its climate and resources vastly contributed to this influx of population, the wisdom and stability of its laws helped in no small degree. The constitution under which we have existed, with few amendments, for nearly twenty-two years was adopted by a vote of the people after a convention of able men had in a painstaking manner carefully considered its various provisions. Now, since the recent legislative history of this state does not show a disregard of the will of the people, as reflected in legislative enactment, and since many conservative people and investors view with alarm the tendency of certain Western states to adopt what they are pleased to call freak legislation, it is well worth the serious consideration of all of the voters of the state whether it would not be to our material advancement as a state, if we should, by our votes upon the proposed amendment to the constitution, decline to adopt the initiative and referendum at this time, or at least in present form, and until some corollary legislation shall be proposed which shall prevent the abuse to which the proposed change is at present susceptible, and until the electorate of the state is required by law, as in the ancient guilds and town

meetings, to attend upon and participate in all proposed initiative and referendum legislation.

In apparent contrast to the democratic tendency of control by the people is the act authorizing cities containing twenty-five hundred and less than twenty thousand inhabitants to organize under what is known as the commission form of government. Its principles are now too generally understood to justify comment, further than to say that its main object is apparently to consolidate power and authority, including that of the appointment of all subordinate municipal officers in the hands of three men—a mayor and two commissioners. However, the initiative, referendum and recall are expressly provided for, and franchises for most all public utilities, excepting steam railroads, must be authorized by a majority of the electors voting thereon, at a general or special election. It might be well to postpone the incorporation into our constitution of the initiative, referendum and recall in state matters pending the observation of its operation in local affairs, since as to the latter, should the same prove to be detrimental to the development of the municipalities of the state, the same can be changed by the legislature.

Chapter 17 of the acts of the last session was introduced and passed to cover a local situation alleged to exist in Spokane. The object claimed for it was to authorize that city to adopt the commission form of government. The act is properly applicable only to cities of the first class. Among other things it purports to validate the inclusion in such charters of the initiative, referendum and recall. Under the subsequent decision in Walker vs. City of Spokane, the act proved to be unnecessary. Its phraseology, however, is such as to leave possible room for the contention that the legislature intended to make operative some charter provisions theretofore invalid by reason of conflict with statutory enactment, or for want of the same. Whether the legislature attempted to, or could under our constitution, and in this manner, relieve such cities of existing legislation inconsistent with their charters, presents some interesting questions that should be determined at an early date. Fortunately, under our constitution, no such permanent and irreconcilable conflict between state and municipal control can arise as prevails in Oregon, which conflict in that state is so concisely pointed out by Mr. Holman, in his address before the State Bar Association.

The last legislature also proposed an amendment to the constitution to be voted upon in the November, 1912, election, providing for the recall of all elective officers, excepting judges. The exception is the only merit contained in the proposed amendment. The

experience of some of our cities with this freak species of legislation has already made them the laughing stock of the country. A public officer should have the courage of his convictions, but in these days of vicious misrepresentation by the partisan press there is no official, however upright and honorable in the discharge of his duties, who is not subject to the whims and caprices of a minority of his representatives and liable at any time, at great expense and inconvenience to himself and to the public, to be called upon to defend his title to the office. Few men are ever elected to public office without there being cast against them in such election a greater percentage of the vote than is required to compel such officer to contest again for the office to which he has been elected, by the initiation of a recall election under the proposed amendment; all of which can have but one effect, namely, to induce the agitator and demagogue to run for office, while deterring men of character and ability from offering their services to the public. Our laws already make ample provision for the removal from office of unfaithful public officials; the method, however, usually requiring some opportunity to appear and be heard, which principle of our law is the very keystone to the protection of life, liberty, property and reputation. The proposed amendment is a clear reversion to the democratic days of ancient Greece, when the populists, inspired by the orator of the day, tried, adjudged and sentenced, exercising on the spur of the moment those functions which the wisdom of ages has established should be divided into executive, legislative and judicial departments.

The Hon. Charles G. Dawes, late comptroller of the currency, in a recent address, viewed this subject in the light of history, in words so forcefully applicable to the subject under consideration, that I have taken the liberty to quote him at some length. During the course of his remarks he said:

"Suppose we had had this power of recall vested in the people of the United States when Abraham Lincoln stood against the voice of the radical and the voice of the aggressive, and against the clamor of the unthinking, against the thousands of these demanding that he take immediate action on this or that question, and that in consequence he had been compelled either to be precipitate in some of those issues upon which hung the safety of this republic or to abandon the helm of the struggling ship of state.

"Every great man in our history whose memory the people love and revere, has had at one time to stand against what was the immediate positive popular demand for action and it was because he stood against the demand that we today look upon him as great.

"The men who stand as the beacon lights in American history were not the men who were always at the head of every popular movement among the people of the United States, and if this country is to endure this kind of a man, in the future of our country as much if not more, than in the past, must have his opportunity to stand by his policy amidst the clamor of the majority against him at the time being. * * *

"Suppose that there had been the right of recall among the soldiers of the army of the Potomac during the battle of the Wilderness. Suppose that General Grant had not had the chance to work out his policy! Suppose that Grant had not had the chance to save this government! My friends! in government as in war, before an Appomattox we cannot always avoid a Wilderness.

"We have had instances where popular clamor had its way. This country even yet does not forget the humiliation it suffered at the beginning of the Civil war, when the time which was being taken by wise men for the preparation of the forces of the North was too long for the impatience of a people bent on action, and we had the cry 'On to Richmond!' 'On to Richmond!' and a brave army was sent to battle contrary to sound judgment, in response to an overpowering demand of a people who were not informed of the real situation, and as a result came the crushing, bitter, terrible humiliation of Bull Run.

"Do not make of your republic a Bull Run! I saw President McKinley at the beginning of the Spanish war, when he put in jeopardy his leadership of his party and of his people in his endeavor to avert the war as well as to obtain time for adequate military preparation, and an almost overwhelming demand came from the people for immediate action, but his firmness in not yielding to it, gentlemen, is his true claim upon fame."

The last legislature, in my judgment, enacted an unwise measure when it restored to the direct primary the nomination of Supreme Court judges. This method was in use a few years since and under it three judges were elected to the Supreme bench. There were numerous candidates, and it was indeed a pitiful sight to see them gumshoeing up and down the state looking after votes, like a ward politician. The life which judges lead separates them from the people. They practically become recluses, and few excepting attorneys know the nature or extent of their vastly important service to the state, or are able to judge of the ability and character of their work. I believe that the great majority of the people of this state want to vote right on the question of the election of Supreme Court judges.

and that they would frankly admit, what every one excepting members of the legislature know to be the fact, that not five per cent. of the voters of the state know who the Supreme judges are, or what terms are next to become vacant, and are only too anxious to have some responsible body set its seal of approval upon the nominees for this office. This was amply demonstrated in the last election, when the nominees of the republican Tacoma convention were elected by very large majorities, and that, too, in the face of repeated misrepresentation and abuse. Supreme Court judges should either be appointed by the Governor, or elected by the people upon nomination by a non-partisan convention, as recommended by resolution of this Association, passed at its last meeting, which resolution is as follows:

"We favor an absolutely non-partisan judiciary and, to that end, recommend that the statutes be so amended as to provide for the nomination of all judges by judicial conventions, composed of dele gates elected by the whole people for that purpose only, and that no other business shall be transacted by such convention than to nomi nate judges, the judges so nominated to be elected at the general elections."

At the last session a workmen's compensation act was enacted, which, for protection to the employe, finds no parallel in the history of any other state in the Union. That some such law should have been enacted is conceded by all right-thinking men. The law, as framed and originally introduced, and which in response to a popular wave would possibly have been enacted by an initiative vote had we such system in force at the time, was clearly unconstitutional. It was later amended by its friends, but only after the benefit of conference, discussion and committee work had brought out and developed the bill in all its phases. In view of the fact that the validity of this act is now pending before the Supreme Court of the state, it would be highly improper for me at this time to comment upon its various provisions. Suffice to say, that sooner or later some valid, fair, honest and impartial law covering this subject will be enacted in this state, and I predict that such result is much more likely to be accomplished by the combined wisdom of the legislature, after full consideration and discussion, than by the vote of the people of the State for or against a particular bill and as submitted with no opportunity of amendment.

The last legislature substituted for the railroad commission a public utilities commission, and vastly enlarged its powers, bringing under its jurisdiction, in addition to railroads, telegraph, telephone and warehouse companies, theretofore under the jurisdiction of the railroad

commission, the various electric light, power, street car, gas and water companies in the state, and to a limited extent the municipally-owned utilities. The bill as originally drawn assumed the same jurisdiction of the municipally-owned utilities as of those of private companies. The municipalities of the state, however, following the deplorable example of those of Great Britain (whose course has done more to retard the development of street and interurban railways, electric light and gas plants in Great Britain than any other single factor) succeeded in inducing the legislature to relieve them largely from the operation of the act. The main justification for acts of this character is, that the state through its proper commission may stand between the producer of a commodity and the consumer thereof, to the end that the best and most efficient product may be furnished to the consumer under the most reasonable circumstances and price. There is no well-founded reason why this principle is not applicable to municipally-owned plants, the same as private ones.

However, municipalities are required to keep the same system of books, to publish their rates, and to change them only upon notice to the commission, as are privately-owned utilities. A faithful compliance with this act will soon result in advising the citizens of a given municipality whether their public utilities are self-supporting and an asset of the city, or are running at a loss, and in part at least maintained from general taxation.

The State of Wisconsin, which is conceded to be fairly progressive in its legislation, recognizes the principle of a legalized monopoly in public utilities; that is, if there is a privately owned plant or a municipally-owned plant (each of which is under like control by the commission) already doing business in any community, neither the city can engage in, nor any citizen or corporation can obtain a franchise to engage in, a like business in that community without first obtaining from the railroad commission of the state an order of public necessity and convenience; the theory being that the commission will require the existing utility, whether publicly or privately owned, to take care of the public in an efficient manner and at a reasonable cost and not impose upon it the burden of maintaining several plants of the same character, since history has shown that sooner or later they are consolidated, and much needless equipment eliminated and the cost thereof, is uniformly urged to be taken into consideration in fixing the rate of return to be earned by the consolidated enterprise.

This state, to its everlasting disadvantage, is today reaping the disastrous results of government by sentiment and hysteria, instead

of by law. The school and other public lands to which it is justly entitled, are being withheld on one pretext or another, until approximately one-third of the area of the state is embraced in so-called forest and other reserves. In the older states of the East, South and Middle West, villages, towns and cities have everywhere grown up around the waterfalls and power sites of their rivers and streams. The opportunity of like development here has been denied to the people of this state, and primarily, if not indeed exclusively, justified upon the plea that it is essential for the federal government to pursue this course in order to protect present and future generations from the control of grasping water power monopolies. The utter baselessness of such a plea is shown by the opinion of the Supreme Court of this state in the case of Tacoma v. Nisqually Power Company, 57 Wash. 420. The point in this case to which I particularly refer, is the holding that the public, in this case represented by a municipal corporation, has the paramount right by eminent domain to appropriate to its own use, and that of the public which it represents, a privately owned water power site and plant, notwithstanding that the same be at the time employed and engaged in a public service capacity. This being the law of this state, how can it ever be claimed that there is any justification for the contention, repeatedly reiterated on the part of the federal government's policy, that it is necessary to withdraw from use vast water power sites of this state and to permit their development only under such regulations as Congress may prescribe, in order to prevent the absorption of the same, and a monopoly to the detriment of the public. In addition to this, most every use to which a water power in this day can be economically devoted, would result in its falling within the jurisdiction of the public utility commission of the state, which has ample power to protect the people against extortion or any of the consequences so recklessly predicted by the so-called conservationists.

The by-laws do not contemplate a review of federal laws by the president, but provide for a report from the committee on federal legislation, of which Judge Hanford is chairman. I shall therefore make no further reference to such legislation, as it will be fully covered in a much more comprehensive and able manner by the chairman of such committee.

Our present system was designed to, and has, established a government not of men, but of laws. The constitution adopted by the people, with its co-ordinate branches of government, was intended to operate as a check and a restraint upon each department, and upon the people themselves. It established a representative form of government, with definite tenure of office, and as if in prophetic an-

[illegible] of the present movement for return to government by a pure democracy, provided, in article 1, section 32, that "a frequent recurrence to fundamental principles is essential to the security of individual rights, and the perpetuity of free government."

The proposed initiative and referendum amendment denies to the executive the veto power as to laws so enacted. This power has seldom, if ever, been abused in this state, but, on the contrary, has often been the means of preventing unwise and sometimes vicious legislation. While this particular amendment applies only to statutory enactment, leaving such statutes, like those passed by the legislature, subject to existing constitutional limitations and judicial interpretation, it cannot be denied that the ultimate object of its authors and other advocates of the direct legislative movement is to establish the principle that all power, legislative, executive and judicial, shall be exercised by the unrestrained will of the majority. However, the plan submitted here, like that in other states, does not even possess the merit of being consistent with this claim of majority rule, since under it, minorities may control, as, in fact, they are doing in Oregon and elsewhere in many matters submitted.

The deliberate judgment of the people may always be relied upon. Not every expression of popular will, however, is what the people themselves wish when they have had opportunity and time for reflection. Too often in our history have agitators attempted to commit the people to unwise measures by displaying banners, which to the public view, read "For Reform," but on the back of which can usually be found the label, "Candidate for Office."

Lawyers of all others, should be the lighthouse keepers to see to it that the channel is marked, the reefs and shoals indicated, so that the ship of state may safely proceed upon her course, freighted as she is with the life, liberty, property and reputation of her citizens. It therefore becomes our public duty to examine and weigh carefully these measures which the last legislature has submitted to the people of the state for ratification or rejection at the November, 1912, general election.

At no time in the history of the state, as now, is such an opportunity afforded and obligation imposed upon the lawyers to give to their fellow citizens wise and impartial counsel on these matters of grave public concern. It is our sworn duty to lay aside every motive of private interest, and with a view solely to the public good, resume the place in the public confidence and council which our pre-

decessors occupied in the formation of our government. In the discharge of this duty we may be publicly abused and our motives misrepresented. It may then be a help and inspiration to recall the words of James Otis, in his memorable address, delivered in Boston in 1761, in opposition to "Writs of Assistance":

"The only principles of public conduct that are worthy of a gentleman or a man are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country. These manly sentiments, in private life, make the good citizen; in public life, the patriot and the hero."

HON. STEPHEN J. CHADWICK

DELAYS OF COURTS

HON. S. J. CHADWICK, SUPREME JUDGE
OF WASHINGTON

For a "time whereof the memory of man runneth not to the contrary" the lawyer has been the target of the jester and the cynic. But recently we have been impressed with the fact that the courts, so long respected as the guardians of our constitutional rights, have become the object of attack and criticism. Courts have been charged with usurpations. It is insisted that they have declared laws unconstitutional. And this fact and other minor considerations are brought to bear as evidence that the courts have ceased to perform their proper functions or to fulfill the objects of their creation. The fact is, although it is not definitely understood by the people manifesting this unrest, that this criticism of the courts comes from a dissatisfaction with our present forms of government. The courts have not changed for the worse. On the contrary, since the formation of our government they have grown in thought and in equity as the people have grown in enlightenment. Judges selected because of their established reputations come from the melting pots of humanity, and they fairly represent the best citizenship of the country.

It is the system and not the courts that is on trial, and it is but natural that those who have taken upon themselves to tear down our present theory of government should direct their main attack toward that institution which is charged with the interpretation of the constitutions, State and Federal. For, if the courts be discredited, their object is attained. Marshall said, to destroy our courts is "to destroy the last hope of freedom." Let it be known that the courts did not frame or adopt our written constitution. The people as a whole did that. The constitution is a dual thing. It is not only a warrant for the existence of the courts, but it is a command to them of the people's will, which they are bound to respect and to see executed. If on the 1st day of October, 1889, the people of this State said that the legislature shall not pass any law impairing the obligation of contracts, and put it upon the courts to say whether or not that provision of the constitution is violated by an enactment of the legislature, did they not say that it shall be the duty of the courts to see that it is

not done until the fundamental law is changed in the manner in which the people have said that it shall be changed? If courts so hold, they will have done that only which the warrant of their existence has compelled them to do; albeit the judge is not in sympathy with his decision and the legislature is fresh from the people and theoratically expresses their present will. This condition was foreseen. The purpose was to compel a direct vote upon the propositions reserved in the constitution, and the courts must, if they be honest, insist that it shall be so. The people had a right to say that it should be as it is and, until they have decided otherwise in the way they have reserved unto themselves, no man or body of men can say otherwise. I am not discussing the policy of these things. It may be good or it may be bad. It may be that the constitutional fathers of our country were mistaken in their theories. It may be that in the adoption of our state constitution, when we ratified these theories, we went far afield. These are questions which the people must decide for themselves. But so long as the fundamental law remains unchanged, I deny the right of men to say that a court is moved by sinister motives when it dares to say that an act of the lagislature contravenes the fundamental law.

But some say, Look at the English courts! They do not declare a law unconstitutional. They do not assume to put their will above that of the people. And assuredly this is so. But it should be known that the English people have no constitution. Barring such instances as have called for the interference of their courts because some law of nature or of natural justice has been violated, the will of Parliament is recognized as supreme. For the people, instead of saying, as we have said, that it shall not be so, have left all matters of legislation, expediency as well as policy, to the parliamentary body. They have not said that one department of government shall be a check upon others, but have, by the usages of time, come to recognize the will of Parliament, immediately expressed, as the law of the land, leaving the courts the right only, and the more pleasing duty, of defining private rights with reference to the law as it is from time to time given unto them.

In the popular cry for democracy, the press of the country and even learned men have overlooked these things. The public seems to have grown to the full girth of the bond it put around itself, and every throb of sentiment tests its strength. Judges whose training makes them regard—yes, even to revere and venerate—representative constitutional government as essential to our liberties, or though not so believing feel nevertheless bound by their oaths, are supporting that bond, although with failing might. The problem

should be met in a calm and deliberate way. If the courts are to be denied the power they now exercise, there is a way to take from them the power which has been put in their hands. For so long as oaths bind and conscience rules, it may be assumed that judges will follow the written law. The remedy, if we are to change conditions, is to so amend or abolish the constitution that the courts will be subservient to the legislative will, and not, as they now are triers of the law. Take from them the power to measure the law by the yardstick of a written constitution, and the object will have been attained. But in our clumsy way, instead of lopping off a member that offends, we demand that the functions of all courts be destroyed. We have lent ourselves to the task of destroying confidence in them. In other words, we would cut down the trunk itself, for a court that is not sustained by public confidence has no function to perform. Following this blind lead, many flank attacks are made upon the courts, and there are those of high and low degree who seek to further the false propaganda by criticisms of varying kind and character.

One of the most popular weapons,—one resorted to with readiness because it is best comprehended by the general public, is the so-called "delay of the law," or rather of the courts, for the judges are charged with responsibility therefor. I am not here to deny that there may be just ground for criticism in this behalf. But I am here to assert that there is no just cause for criticism in the State of Washington. Our courts have been prompt and generally efficient. The legislature has from time to time met the needs of the litigating public ,and has created additional courts to hear and determine their pleas. So that, so far as our laws are framed at the present time, it may be taken as a fact that the average case is as expeditiously tried and determined as the rights of the parties and the due administration of justice will warrant. In considering our case, we must bear in mind that the will of the people today may suffer its scornful renunciation tomorrow. No theory can be advanced that will not find supporters, nor can any plan be suggested that cannot be sustained by some show of reason.

In 1893, the legislature of this State abandoned the existing practice act and enacted another. Under the new practice act it was possible—in fact, it was the design of the law, that an action might be begun without the aid of a court; not only begun, but if no issue of law was raised, it might be prosecuted to a final issue of fact by the interchange of written pleadings between the parties themselves. More than that, the law put it in the hands of counsel, either by express enactment or by necessary implication, depending upon the view point of the individual who assumes to consider the law, to de-

cide when and how and in what forum an action should be tried. My first act as a trial judge was to set aside a judgment that had been entered by a previous judge in defiance of a stipulation between the party to the effect that the case should not be called for hearing before a certain time. In other words, the law as we have it, makes it impossible for the judge to drive the business of the courts. If a case has not been actually set down for trial, he cannot clear his docket if for any reason a party is not ready for trial, and is able to obtain the consent of his adversary that the case shall be taken up at a later date. There is much to be said in favor of our present practice act, and generally I favor it.

(INTERPOLATED—"As one member of this Association I do not favor the suggestion made by Mr. Graves that the matter of revising our practice act be put in the hands of a commission. I think this State has suffered as long and patiently as any State should suffer from codes and code commissions. A practice act cannot be a creation. It must necessarily be a growth. Although we may create a practice act or delude ourselves into the notion that we have done so, we nevertheless have to go through the slow processes of judicial interpretation before it will be accepted by, or be satisfactory to the Bar. Consequently although we may enact a law we will not know the law until it is passed upon by the courts and, by that time, there will be those among us and those who will follow after us who will insist that the practice act as we then have it is obsolete and that we should appoint a commission to make a new code.")

But, assuming without admitting, that there is unnecessary delay and a need for revision, I would suggest that the legislature be asked to so amend the law so that, when an issue of law is tendered, it shall be tendered by one plea, no longer to be denominated a motion or a demurrer, but an issue of law; and that the statute be so safeguarded in its terms, or by a rule of court, that no feigned issue or false issue of law be submitted to the court. There is no reason why the law of the case should not be settled at one hearing. Our present plan of allowing a demurrer after a motion has been overruled has not only led to confusion, but is in itself an active factor in our problem. I remember to have seen a record coming from Spokane county wherein one judge had passed upon a motion. In passing upon it he clearly outlined his theory of the law. A demurrer was heard by another judge who entertained an entirely different theory of the law and the demurrer being renewed ore tenus at the trial, the judge said that the case must be tried upon his theory rather than the theory of the judge who had passed upon the motion.

I remember another case from the same county where a judge had passed upon a demurrer and the case had come on for trial before another judge who said that he did not subscribe to the view of the law of the judge who had passed upon the demurrer, but that, inasmuch as the court had so ruled and the issues had been framed upon that theory, he would try the case and pass it up to the supreme court.

It will require no argument or elaboration to convince any one that these conditions should not be tolerated if it is possible to avoid them. I would suggest also that all such pleas be filed with the clerk of the court before service, and come on for hearing without demand or notice on the first motion day of the court thereafter, and that they be heard by the court and then determined, unless continued under such conditions as are now to be found in our statute providing for the continuance of cases. I would suggestion that in all jury cases the court examine the jurors as to their general qualifications, and that counsel examine only as to matters going to actual bias. I would abolish peremptory challenges.

(INTERPOLATED—As a practitioner and a trial Judge I became convinced that there is little reason in the theory and less in practice for challenging every man who comes into the jury box. I cannot recall, at the present time, a peremptory challenge that I ever made that I had a real reason for, unless it be in the instance which I will relate to you. The panel was exhausted with the exception of two men. One man I conceived to be an exceptional friend; the other I rather thought I did not want. At any rate I preferred my friend and took a chance and made the challenge; challenged a man who had every right to sit on the jury; he had qualified himself within every rule of the law. He lacked only in the pleasure and benefit of intimate association with the challenging party. My friend came into the jury box. It was a personal injury case, and that means something to an attorney, as you all know. (Laughter). The jury hung out for many hours, and finally they came in with a verdict for twenty-seven hundred dollars. A short time after the verdict was returned, my friend came to me in the happiest frame of mind, saying: "I had a devil of a time with that jury." I said, "How's that?" "Well, sir," he says, "you know those fellows wanted to bring in five thousand dollars. It was all I could do to prevent them from doing it." I said: "Why in thunder didn't you let them do it?" "Why," he said. "I wanted to get you a verdict that the Supreme Court would let stand." (Laughter). Since then I have been down on peremptory challenges.

In this connection I want to read you something from an article

in the American Law Review. I have looked into the practices in the English courts to some extent, and there is some little good—not a great deal—to be found in their practices, but in this article the writer under the title of "The Docket," says:

"The Docket sat through the trial in whole or in part during his three months in England of at least fifty criminal cases, two of them capital, and most of them felonies of the higher grades. In more than half eminent counsel were engaged on both sides. He was present at the trial of divorce cases, between parties of prominence, where the jury is employed just as in other common-law cases and where it also assesses damages against the co-respondent. Yet he never saw it take longer time to choose the jury than the few minutes required to call their names and administer the oath and he never witnessed a single challenge or heard an objection.'

"One of the leading criminal judges of England said to the 'Docket' when questioned by him on the subject, 'I have been on the bench for six years. Six hundred or more indictable offenses are tried in my court in a year. I remember only two or three challenges in my life, and not one during the last three years, and the 'Docket talked to more than one practitioner at the criminal bar who acknowledged that he had never seen a juror challenged for any reason, either by the crown or by the defense.")

I would suggest also that all judgments and decrees be entered within five days after their pronouncement by the court. And furthermore, and perhaps it is the most important suggestion I have to make, that an appeal, if one is to be taken, should be taken within ten days after the entry of the judgment. There is no reason why an unsuccessful litigant should be allowed a period of ninety days in which to perfect an appeal in any case. He must know when the judgment is rendered whether he intends to avail himself of that privilege and to a allow greater time not only delays the final determination of the litigation, but in a way deprives the successful litigant of the fruits of his victory.

I doubt whether any just criticism can be passed upon the courts of this state in the matter of criminal trials. It makes headlines and space if one who has committed a crime or who is charged with the commission of a crime is tried and convicted within a few days; but there is great danger in this, for there is a sentiment rife which, if unrestrained, would deny to every one charged with crime the presumption of innocence and the right of appeal in case of conviction. Hence, our laws should be so framed that a just and proper delay in criminal cases would be available. This is due, not only to the party charged, but to the state as well. Sentiment must not be con-

sidered; for, although the public will applaud the hasty conviction of one changed with crime, it will at the same time insist upon an intolerable delay if the detectives in charge of a given case insist that they are following some clue. In considering delays then, in criminal cases, we find that delay is discountenanced when the public has rendered a verdict, but it is demanded when a party is suspected, although there be no case against him. In Thurston county recently a most atrocious crime was committed. A suspect was taken in custody. No charge has been filed against him. Taking the press for our guidance, the officers admit that they have no case against the man. But they hope to make out a case. The man is held without charge, without preliminary examination, and without an opportunity to give bail. We hear no complaint because of delay in this case.

(INTERPOLATED—After I dictated this paper it was given out that another party had confessed to the crime and that the officers hoped to make out a case. The man first charged is, however, still held. We have heard no complaint of delay in this case. I apprehend if it had not been for the confession. that the public would have demanded that there be a delay for an indefinite time so that the authorities might work ont the circumstances upon which they relied to fasten the crime upon the first suspect.)

It may be seriously questioned whether a man should be executed within at least a year from the time of his conviction. Our books are full of cases where an innocent party has suffered the penalty of a crime committed by another, and although it may please us to know that some one has been convicted by a jury and sentenced by a court and paid the penalty of a crime, I doubt not that, if it had been our own case, we would expect such delay as would insure a trial free from the passion of the hour in which the crime was discovered. In the general clamor against the courts because of their delay, it has occurred to me that the fight is not always honest, for I have observed that many of those who have most stoutly maintained that the courts are offending in this regard, have, when called to the bar of justice, been quick to resort to every technical plea at their command to delay and defeat a final hearing.

Those who criticize courts because of their delays will, in almost every instance, cite the English courts as an example of celerity. It is true that criminal procedue in England is expeditious, but we may well ask ourselves whether anything would be gained by aping the English courts. We adopted the theory of the common law, that a man is innocent until he is proven guilty, and have sustained it with jealous care. This principle cannot be preserved if we are to

railroad those accused of crime. The same critics are wont to cite the Crippin case as an instance. It is true that it was quickly heard and quickly determined. There was no delay in that case in getting a jury, because the press of that country is not licensed to try a case and thus create or forestall public sentiment. The public had not been informed as to the true merit of the case. The critics do not, in discussing this case, say that at least one newspaper man was sentenced for contempt for publishing some detail of the case while the defendant was incarcerated and awaiting trial. If this practice could be adopted in this country, our courts would not be criticized in cases of public concern because of delay in getting competent and fit jurors. We would get jurors as readily as they do they do in England. Having a due regard for the rights of the accused, the law is not delayed in the courts of this State. We insure an opportunity to prepare for trial and an appeal, a right but recently recognized in England. I have known one trial judge now serving the people of this State to try four criminal cases in one day. I have known another who tried eighteen felony cases in twenty one days. They were cases in which the public had taken no particular interest. The public mind had not become fixed, so that all that remained for the court was to try the case. Its valuable time was not taken up in trying a long panel of jurors. Criminal cases are tried in the State of Washington without delay, with less formality, with less technicality, and with more justice than like cases are tried in the English courts.

(INTERPOLATED—In so far as civil business in the English courts is concerned, it is almost impossible to have cases tried or determined. Certainly they are not open as the courts of this state are open to what we might, if this were a political year, call the "plain people." There has been no particular change that I can find since the time that Dickens told us of the intolerable delay of the English courts, in Bleak House. I imagine the title of "Jarndyce versus Jarndyce" could be made a head line for what I am about to read. It is from an English writer and is found in The Canadian Law Times for January, 1911:

"In looking at the way trials are conducted in English courts one cannot, with all our admiration, fail to conclude that the High Court of Justice in England is rapidly becoming, if it has not already become, a rich man's court. The fees that successful barristers command, added to the solicitor's costs which are higher than ours, make the total expense of the litigation out of all proportion to the amount involved unless that amount should be very large. The jurisdiction

of the County Courts is much more limited than our own. The client who has a claim of a moderate amount, or who is himself a man of moderate means, hesitates long before availing himself of the Courts. I am not a prophet but I do predict that a radical change in the judicial system is about to take place and that this change will consist largely of a substantial increase in the jurisdiction of the County Courts."

In other words, the poor man cannot afford to seek redress at the hands of the law, and the rich man can indulge a petition to the courts of that country as a luxury available only to his class. The poor cannot afford to go into court and the rich cannot afford to stay there).

So far as the Supreme Court of the State of Washington is concerned, I believe its work will compare favorably, so far as expedition goes, with that of any court in this or any other country. It may not be known to all, but the Supreme Court of this State entertains more appeals and renders opinions in more cases in each year than any other court of last resort in the United States. Taking the January term, 1910, for example, we find that the court heard one hundred and eighty-one cases. The average time consumed in the decision of the cases was forty days, while the eleven criminal appeals of that term were disposed of on an average within thirty-three days. It would seem that this showing would be enough to convince any one that an attempt to accomplish more might result in many ill considered opinions; and there are those, no doubt, who will insist that it is so even now.

But if there is a desire on the part of the bar to further assist the court and insure a more speedy termination of its work, and, as I believe, better considered opinions, I would suggest the following items: The most important of all is that all cases be brought to the court by bill of exceptions rather than by a statement of fact. A case was recently heard in our court, and although we were told on oral argument that case consumed three weeks in its trial, the record material to the question submitted to the court did not exceed one hundred pages. It is possible for every judge concerned in the decision of this case to give it a thorough and comprehensive consideration. On the other hand, a case involving a simple question of fact came to the court with over four thousand pages of typewritten testimony. Another case, where a non-suit had been granted, because it appeared to the trial judge that the party responsible for the injury complained of was an independent contractor, comes to us with over twelve hundred pages of typewritten testimony, with no brief

submitted on the part of the respondent. But recently a trial judge refused to certify a statement of fact, and mandamus was sought and refused on the ground that the court in his return said, among other things, that the statement was not true; but the main reliance of the petitioner was that the statement of fact offered by the appellant was in narrative form, and that the material testimony had been condensed into four pages. The writer of the opinion in that case thought it not out of place to suggest that narrative statements are to be encouraged, and that the fact that one hundred pages had been condensed into four did not indicate to the court that it was not a true statement. It might still be subject to a motion to strike for redundacy.

There is another item that would greatly aid the court, and yet it may seem trivial, and that is that all records should be bound at the end rather than on the side of the paper. If the record is to be put on a shelf I admit that the form of binding adopted by most of the court reporters makes a better looking job; but a record bound on the end can be read much more handily and is in every way more convenient for those who are called upon to consider it.

The time of the court might also be saved if those who prepare petitions for rehearing en banc would first cite the volume and page of the Washington Decisions where the reported opinion may be found. I am one (and I believe I voice the notion of all of my associates) who sometimes finds it necessary to re-read the opinion, either before or after the petition for rehearing has been read. Oftentimes considerable time is taken up in searching out these opinions. I would also suggest that in petitions for rehearing en banc a brief statement of the case be made. This can be done in the ordinary case in one or two pages of typewritten matter.

There is another item, or rather a fault, that is possible of correction. Very often, when the trial judge is driven by his work, he will adopt most of the requested instructions or findings made by both parties. Now, a trial must proceed upon a fixed theory. The plaintiff must have his theory, the defendant a theory and the court a theory; and if the instructions are taken from both parties without recasting them and bringing the theories of each party down to some concrete form, it makes all manner of confusion and puts an unwarranted burden upon the appellate court. I recall one case where there was only one question involved—whether or not the act of a party brought him within a prohibitory statute. The instructions of the court ran over twenty pages, when, as I verily believe, the law of the case and the general instructions given to all juries might have been so condensed

that there would have been space to spare within three pages. It may not be possible to cure this evil, but it is possible to cure the evil of confused findings. The burden should be put upon the prevailing attorney to prepare, after the court has announced his decision, a concrete statement of the case as the court has found it to be. If in his first attempt he does not meet the views of the court, he should be compelled to renew his task until it is properly done. Thus, findings contradictory of each other would be avoided, and, having the theory of the court well in hand, the labor of the supreme court would be greatly lessened.

Many records come to the court with all the instructions and findings submitted by both parties, but with the words, "given' or "refused" written or stamped with a rubber stamp on each particular finding or instruction. In one case, in order to be sure that a proper grasp of the case might be had, I was compelled to turn the record over to a stenographer, who brought back a copy of the findings as they had been "given' by the court.

These considerations may seem to be, and possibly they are, unimportant; but if there is cause for the cnarge that the courts have delayed their work, they are worthy of consideration. But I insist that the charge of delay is unwarranted. The average civil action is tried out and determined at the will of the parties litigant. In criminal cases there is no delay. True, there are some few instances where a trial is postponed, but these instances do not mark the rule. We should not give ourselves over to a hue and cry when there is no underlying truth to sustain it. For, if the system has its faults, as all human systems have, I insist that the great good that has come to humanity from those fundamental principles which first took positive form in England in the twelfth century, and have come to us sanctioned by the sages of the law, have brought not only protection to the life and liberty of the individual, but blessings to the people at large.

In closing I desire to suggest that the duty is upon every lawyer, and we have a right to assume that he knows the true fact, to raise his voice in defense of our institutions, and more especially the courts of our country, for upon them the security of all others depends. If those who are in a position to combat error do not rise to the occasion, I fear that the assassination of the character of our courts, which has hitherto been a pastime, will become a business; for already there are those who have found it profitable to capitalize the discontent which seems to be general all over our country, the causes of which I am not here to discuss, and with lurid adjective, and verb

adorned with the black cloak of falsehood, have done much to destroy that confidence in ourselves and in our country which must sustain our government if it is to endure.

This paper has been hastily prepared. I have had no time to mature my thoughts or to revise my notes. In closing, I desire to adopt the words of one who has couched in a few words more than I have undertaken to say:

"Courts and judges are not above criticism, and honest judges do not resent it; but they have a right to expect, and it is our duty to insist, that that criticism shall be just. It is not sufficient that the critic shall be honest, but he must be likewise qualified and competent to pass judgment upon that which he criticises. Indiscriminate and unjust and ignorant criticism not only tends to weaken that respect for our courts upon which their usefulness depends, but it, of itself, defeats its very purpose. To criticise a court for rendering a decision which proves unpopular, although justified and required by the law, is to invite and encourage corruption and dishonesty in the judiciary. It serves notice upon every judge upon the bench that the esteem in which he will be held by the public, and the probability of his re-election, depends not upon his honesty and integrity—not upon his learning and ability, but upon his willingness to prostitute his high office to the appeal of public clamor."

FRED H. PETERSON

THE COURTS OF GERMANY

FRED H. PETERSON, SEATTLE

Last summer I had my vacation in Europe. Being a native of Hamburg, I naturally spent some time in Germany, and had I anticipated that your Commitee would call upon me to prepare an address on "The German Courts," I would have made inquiry there about various matters relating to the courts and the administration of justice, upon which the books are silent, which to a practicing attorney would probably be most interesting. I do not pretend to any technical knowledge on this subject. What is stated here is largely based upon personal observation and some study of the subject at random during many years.

Courts, as generally understood by lawyers, cannot be conducted without judges and attorneys. It seems to me to be within the scope of my subject to state briefly how judges and attorneys are trained for their professional career in Germany. In a country where technical schools are highly favored, and education is all directed with a view to special qualifications, in the professions, trades, and business—in brief, where everybody is "specializing"—it will be readily seen that no one can become a judge or attorney without following the prescribed courses of study and work. This consists of training in the grammar school, then the gymnasium, which is equivalent to our high school, or perhaps more like an intermediate college; next follows a three years' course at law in the university, where lectures are given on Roman law, ancient German law, theory and history of law, the German codes, psychology, logic and economics; the latter is specially required by the government. At graduation, the student is usually between 23 and 24 years of age. In this country after such training, a young man would consider himself a full-fledged lawyer, ready to advise, practice law, or aspire to a judicial office. Not so in Germany. The government now takes a parental interest to see that the aspirant for judicial or forensic honors has actual practical training in the various courts, and also in the office and work of a practicing attorney.

Upon passing the university examination, the aspirant obtains

from the state the degree of "referendar," which bears no relation to our similar sounding name of "referee,' for the degree by comparison would be more like the LL. B., or Bachelor of Laws. As "referendar" he is placed under the tutelage of the "Amtsrichter," a county court judge, who is legally obliged to see to the young man's education for nine months. He is also required to keep the court journal, prepare writs, orders, and decisions, under the direction of the judge. At first he performs service in a court having the simplest class of business, but as he progresses he will be assigned to courts of more importance, as in the larger towns. After doing duty for nine months in the "Amtsgericht" he is advanced to the "Landgericht," which compares with out Superior Court. There he must attend for one year regularly the sessions of the court, keep the records, write decisions, and do such services as will thoroughly familiarize him with all the business. In fact, the referendar has to work out decisions, which are carefully inspected and corrected by the judge; and he is at times appointed as a deputy to determine uncontested or minor matters.

Next the referendar must occupy himself for a period of four months in the office of the State's Attorney, assisting in the prosecution of state cases, continuing his course of study. Then comes a half year's course in the office of a "rechtsanwalt," or attorney and counsellor-at-law, to learn the practical part of the office work, and to appear in court, having charge of minor matters. Attorneys do not like to be troubled with the instruction of young men, so a statute was passed in 1878 making it compulsory.

Again the referendar returns to the Amtsgericht for one year in some large city, so as to get a more extensive view of business and affairs. He is assisted by a course of lectures delivered by the judges to the referendars as they meet for that purpose. About this time he may be appointed as a sort of deputy judge to determine and dispose of ex parte or unimportant cases.

One would suppose that this course would be amply sufficient to qualify for any judicial office, or for law practice, but not so in Germany. Our student must yet go through a nine months' course in the "Oberland esgericht," the Appellate Court. Here he must study special appeal cases, prepare decisions subject to revision, and must work out the grounds or reason—for in Germany not the smallest case is decided without stating, first, the facts; then the code provision, or private law applicable; and finally, giving distinct reasons for the decision or conclusion, upon which the judgment of the court is rendered.

Now, then, our candidate is ready for examination, both written and oral, before a commission, consisting of judges and lawyers of high standing and experience. I was informed that about one-fourth of the referendars failed to pass. But as in all examinations he may apply again in the course of six months, and if he fail a second time he can never be permitted to follow the profession of the law in any respect, nor hold any judicial office—he stands rejected, and must pursue some other calling. By this time, you will observe, the candidate for legal honors, after graduating from the university, has spent four years and four months in the courts and with attorneys. During all this time he receives no compensation, except in some of the larger cities he is allowed about 200 marks per month, equal to $48.00. If he passes the examination he obtains the title of "Assessor," which has not the remotest reference to the office that we know by that name. So he may choose to follow, first, the career of judge; second, that of state attorney; third, that of practicing attorney.

It is evident that the state can only furnish employment if either of the first two named are selected; but if the latter, he makes application to be admitted to the bar; if there be no objection to his character, his request is granted as a matter of course, and he is no longer known as "Assessor," but becomes a "rechtsanwalt," or attorney and counsellor-at law.

If the "Assessor" should elect to become a judge or state attorney, he will have to serve as assistant to the state attorney or judge for about four or five years, receiving about 200 marks a month, that is, $48.00. Then he may apply to be appointed judge or state attorney, and if deemed qualified and his record is good, he may be appointed, or he may be doomed to disappointment for years. The only opportunity then left him is to change over to the "Rechtsanwalt" class and practice law.

There is another peculiar thing. The practicing attorneys so far as I could observe bear the title of "Dr.," meaning "Doctor," which is purely ornamental and of no utility. It is a sort of side degree conferred at the university, and is only serviceable to those who fail in the final examination for assessor, but for fear that the public should suspect that a member of the bar might have missed something in the way of degrees, the "Dr." title is everywhere in evidence. It will be observed that hardly anyone ever becomes an attorney in Germany until he is 28 to 30 years old. As compared with our system, their preparation for the bar is extravagant. From my observations in court, I think the German attorney, by reason of his long scholastic training, lacks initiative—by this I mean, he has too much book learning, lacks ready adaptability, is short of knowl-

edge of practical affairs and worldly matters. He has been tied to leading strings too long; he follows the beaten path and lacks originality. On the other hand it must be conceded that in the routine court work and in the trial of ordinary cases, their judges and attorneys are adepts. I doubt very much, however, that such training would produce a Marshall, Webster, Lincoln or an Erskine, but it is probably best adapted to the genius of the German people.

Attorneys also have opportunities for public service. Take for instance in the State of Hamburg: The Senate is composed of eighteen members; of these nine must be attorneys; seven merchants and two generally. As to professional income, that varies, as it does here. I was informed that the general counsel for the largest trans-Atlantic steamship company received only 20,000 marks, or $4,800. In this country one holding a similar position would probably be paid three to four times as much. Each state regulates the education and admission of attorneys, but the routine given is substantially adopted by them all.

Now about the courts. First, is the "Amtsgericht," or "county court," which has original jurisdiction of all suits about property not to exceed 300 marks, or $72; between landlord and tenant, master and servant, common carriers, freight charges, probate of estates, and various minor matters. This court has for the trial of misdemeanors a department known as "Schoeffengericht," for which we have no equivalent. The name comes from "Schoeffe," whose duties are those of a lay judge. When court is held the county judge presides, and with him two "schoeffen." The three hear the evidence; and any two may decide upon the defendant's guilt. But after the decision the judge alone determines the penalty. The "schoeffen" are selected the same as jurors; from the substantial citizens, and the service is regarded highly honorable. There is no compensation whatever.

I attended four trials in the "Schoeffengericht" at Hamburg. They are methodical, the defendant allowed every right under the law; even technicalities were invoked in his favor by the presiding judge. By this, I mean he was tried strictly according to law. In three cases, acquittals were granted, and the other was moderately sentenced. No one was represented by counsel, although asked if they desired an attorney. The court was assisted by the state attorney and a referendar, who acted as clerk.

The procedure, in brief, was this: The defendant was called before the judge, who read a short statement furnished by the police, giving age, occupation, character, previous conduct, etc. He was informed of the charge, and the law was read to him applicable to his

case; asked if he wanted counsel; then told he could have a trial at once, or at some future time. All demanded immediate trial. The state attorney called the witnesses, and was absolutely fair in the examination. It seemed as if he were anxious to do justice and not merely to convict. The judge freely put questions which would have a tendency to excuse the defendant, or acquit. The witnesses were sworn, but the defendant was not. After the evidence the state attorney would arise, state the charge, refer to the criminal code; then show what must be proven to convict, and would review the evidence impartially, expressing an opinion to the court whether the defendant should be convicted or acquitted. The judge, the two schoeffen and the referendar would retire to a private room, and in a short time would return with a written statement reciting the offense, the law applicable, proof offered, and the reasons specifically set forth why an acquittal or conviction should be had. This was then read to the defendant, and if convicted, sentence was at once imposed. The entire procedure was absolutely fair, exceedingly methodical, and jus tice administered "without fear or favor."

According to the directory, Seattle has over a thousand lawyers. The city of Hamburg, which is four times as large, has about four hundred. The number of judges is much greater in Germany in proportion to the population. For instance, Seattle has nine Superior Court judges and four justices. In the city of Berlin, the "center amtsgericht," with a million people, is served by about one hundred county court judges, or at the same ratio, there would be twenty five for Seattle. Not to say anything about the number of Superior and Appellate Court judges in the same district in Berlin. The reason for this is that the judges there are virtually counsel for litigants, doing much work that is here done by attorneys.

The second court is the "Landgericht," like our Superior Court, with general jurisdiction. Criminal jurisdiction is exercised in a department known as "Schwurgericht," or "jury court." Three judges preside and twelve jurors. One or more alternate jurors are chosen to deliberate upon a verdict, as substitutes, if any of the twelve should become incapacitated. The other department is known as the "Handelsgericht," or commercial court, presided over by one judge and two laymen, known as Handelsrichter, commercial judges, nominated by commercial bodies and appointed by the government. Any German is eligible who is registered as a merchant, is thirty years old, and otherwise qualified as specially provided by law. Only commercial cases are sent to this department, upon motion of either party. I witnessed a trial between merchants, and was much pleased with the speedy method of determining the case. In fact, the com-

mercial court offers a trial before the judge and a jury of two, as the "Schoeffen" court affords a trial in minor criminal matters before a judge and a jury of two. As the persons selected are intelligent business men, such trials are very satisfactory. A similar plan it seems is adopted in the English Admiralty Court, where "the judge is assisted by two Masters of Trinity—retired sea captains."

The third court is the "Oberlandesgericht" or Appellate Court, which exercises appellate jurisdiction only, and is divided into civil and criminal senates. In Bavaria there are several appellate courts, so that kingdom has another court known as the "Oberteslandgericht," which means highest or Supreme Court. These appellate courts exercise much the same jurisdiction as our State Supreme Court, and consequently there is another court. But the three republic cities, Hamburg, Luebeck and Bremen, have only one Supreme Court, situated at Hamburg, where a magnificent building is in course of construction for this court.

The fourth is the "Reichsgericht," located at Leipzig, which is the Imperial Court of Germany, like the Supreme Court of the United States. But there is a great difference in the appointment of judges, in that the "Bundesrat,' or senate, nominates the judges and the Emperor appoints the nominee. All court judges are appointed by the respective states. The Reichsgericht has jurisdiction over patents, consular matters, where local courts have passed on cases arising under imperial law, etc.

In Germany there is but one Federal Court. The laws, both Federal and State, are administered by the State Courts. The theory is that the Federal government legislates on all subject matters provided for in the constitution, and as to those matters the states have no power to legislate unless the Federal government has not legislated on the subject, then the states may pass laws on such matters.

The German Constsitution consists of seventy-eight articles Under Section 13 of Article 4, the Empire is given authority to pass "general legislation with respect to the whole domain of civil and criminal law, and legal procedure." The result is that the practice is the same in all the courts. Everything in Germany is regulated by the codes. They have uniform criminal, civil, bankruptcy and commercial codes, which went into effect throughout the Empire January 1, 1900. But the Reichsgericht has not attained the importance of our United States Supreme Court, largely because the power of declaring laws unconstitutional does not appear to be vested in that court. According to the German idea the Emperor, his chancellor and the "Bundesrat" determine whether a proposed law is

within the Constitution, if deemed unconstitutional it is not enacted into law.

One thing stands out prominently in German law, that is, the independence of the judiciary. It is provided: First, "The judicial power shall be exercised only by courts"; second, "These courts shall be subject only to the law." The uniform practice has been to leave the judiciary absolutely independent. A trial in a German court impresses one with the idea that justice is to be done speedily between the parties, "without fear or favor."

Considering that in various states of our country, recall of the judiciary is being debated, and actually made the law in at least two of the States, and that such laws have the endorsement of our distinguished Ex President, it is highly probable that before long we shall have to face the question of recall of Judges in this State. It will be remembered that there is a proposed constitutional amendment to be voted on in this state, providing for recall of all non-judicial officers. The German theory is that the judicial officer must be absolutely independent, and free from any interference whatsoever, excpt that he may be removed by the court as provided by law.

Now let us see how this matter is regulated in Germany. All judicial officers are appointed for life, which means during good behavior, competency and efficiency; here the appointment, as in the case of Federal Judges, the tenure of office is based on good behavior. In this country a method of impeachment is provided, before the U. S. Senate, or before the Legislature; but in order to have and reasonable success in sustaining charges, no matter how well founded, it is necessary to consider the political complexion of the legislative body, and also which party appointed or elected him. The result has been that impeachment proceedings have been "few and far between," for a charge that would practically amount to a felony, would have to be preferred in order to have any chance for a hearing at all.

Under the German law, this matter is regulated thus: If a judge lacks qualification, industry, or becomes incompetent for any reason, charges may be preferred before a special court of inquiry. In the case of the Reichsgericht a member may be temporarily suspended from office by the full bench, after hearing the attorney for the Empire, in the event that he is charged with a crime. He may also be removed and sustain loss of salary; by determination of the full bench of the reichsgericht, after the attorney for the Empire has been heard, if the Judge has been sentenced to punishmnet for a disgraceful act. If a judge of the reichsgericht because of bodily in-

firmity, or weakness of physical or mental power, becomes unable to perform the duties of office, but does not apply for retirement, or if requested, refuses to do so, within a short time, then such judge after he and the attorney for the Empire have been heard, may be retired by the full bench of the reichsgericht. In the latter event he could be allowed a pension equal to 20-60 of his salary, if retired within the first ten years, and thereafter would be increased 1-60 for each additional year of public service. The period of public service would be counted from the time that judge first entered office, whether as referendar, or in any other capacity, as a public servant, for professors of law in the universities may be advanced to judgeships.

We know of instances where judges in this state under such a law would undoubtedly have been retired. It seems to me that the people will insist upon a recall law for judges, as now existing in some states, unless a plan be adopted somewhat similar to that of Germany. For instance, if complaint were made of the conduct, competency, or integrity of a judge, such should be speedily referred to a special tribunal appointed by the Governor, consisting of four Supreme Court Judges, four Superior Court Judges, the Chief Justice presiding ex-officio. No fair-minded person will deny that such a court would be far superior and infinitely more competent to determine whether a judge should be removed, than the general public. I truly believe our impeachment method is archaic. It should be superseded by a modern method permitting a speedy adjudication. before a competent non-political tribunal. Unless some such method is provided for, which of course would require an amendment to our Constitution,—we may as well be prepared to expect the recall of judges by popular vote. In referring to judges nearly a century ago, Jefferson said, "impeachment is scarcely a scarecrow."

It is justly said that lawyers and the law always lag a little behind the times. They are naturally conservative, but it is evident that court proceedings and many things connected with the law will have to be more or less modernized. The people are impatient of incompetent or indifferent officers. They demand the highest efficiency in the management of our great railroads and industrial corporations; they will also insist upon and demand that judicial officers are equally competent, and that they be faithful in the performance of their duties. But above all we must maintain the independency of our judiciary. It is likely if a court such as suggested were instituted, that the people would be satisfied to elect judges for longer terms. I think the term of four years is too short; it should be at least ten years. The fear now is if an incompetent person is elected

to office that he will be in a long time, and short terms have been provided for; but with a court as suggested, there could be a speedy removal in case of an incompetent or dishonest official. It is all very well to say that a judge is sworn to do his duty, although he knows he may be recalled at any time, he will render a just decision, no matter how unpopular it may be; but in actual practice for the good of the public and in the interest of litigants, it is better to place judges in a position of complete independence. In reading English history a thrill of admiration runs through us as we read of the great, just and fearless, Lord Mansfield, when he was informed that a mob had burned his house in revenge for his decision, he calmly announced in Rex vs. Wilkes: "I wish popularity, but it is that popularity which follows, not that which is run after! it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands." In visiting Westminister Abbey, entering the Northern gate, one is impressed by a magnificent marble pedestal, upon which is seated in all the pomp and dignity of a Lord Chief Justice of England, in heroic figure, the celebrated Mansfield, as if still proclaiming to the world, that under any and all circumstances the majesty of the law must be upheld and respected—saying: "Fiat justitia coelum.'

Now, as to the effect of the laws in Germany upon the Nation. I believe that just and wise laws, properly enforced, are the basis of a country's progress and prosperity. While we have read much about the vigorous enforcement of the law in Great Britain, we hardly ever read or hear about Germany in that respect; but the fact is that Germany enforces its laws equally well, if not better, and the laws are well adapted to the business and affairs of the people.

Germany is composed of twenty five independent states, one territory, and the three cities referred to. Each state has its own laws, but the Imperial Government legislates on all general matters under the Constitution of the Empire.

The British people sent Commissions to Germany to ascertain "the secret of German prosperity," for the latter is undoubtedly the most progressive and prosperous country in Europe. Many reports were received, and many divergent reasons assigned, all referring to what they had seen, but no one properly solved the problem or answered the question, except one who reported what he had not seen in the following language: "No unemployed standing on street corners. No drunkenness or brawling. No hooliganism. No slums of poverty as in England. No discourtesy. No begging or hawk-

ing. No deformed persons. No land out of cultivation. No ragged children. No late trains."

As Germany is supporting sixty-five million people in a territory, less in extent than Washington and California combined, it is certainly a high tribute coming from an Englishman.

Finally, I would urge upon you as members of an honorable profession: Let us see to it, that none but men of ample learning, natural fitness, and spotless integrity, wear the judicial ermine. Let us beware likewise, if any one shall bave been advanced to the great dignity of a judge, and shall be found wanting, that he be speedily removed—to the end that the cause of justice and right may not suffer reproach and disgrace through his shortcomings. We have a great and glorious state. Its resources are vast and varied; richer than any like area of Germany, capable of supporting in comfort and happiness many millions. We as citizens of this greatest Republic in all history, should feel a civic pride in beng placed in a position where we can be of service to the state and to our fellowmen; in writing righteous laws upon the statute books; in aiding our judges in the administration of justice, in advancing the renown of our beloved country, in that it may bear an enviable reputation among the nations of the earth, as being the least burdened, the best enlightened, and the most liberal Government yet devised by man—a Government of Justice, Equality and Liberty, regulated by law.

HON. FRANK S. DIETRICH

THE FACTS IN THE CASE

HON. FRANK S. DIETRICH, U. S. DISTRICT JUDGE

BOISE, IDAHO

We may start with the hypothesis that whether it be in the court room or in the consultation room it is a prerequisite absolutely essential to the just application of any principle of law that the material facts first be known. Responsible legal advice always assumes the existence of a given state of facts, and a judgment or decree rests upon facts expressly or impliedly found. A disclosure of the facts of the case is therefore a prime function of all legal procedure, and upon the success of the court in making their discovery primarily depends the efficient administration of justice. True, a mistake of fact, unlike an erroneous principle of law, does not, as a rule, harmfully project itself beyond the proceeding in which it originated, and hence, if isolated, the evil that may follow, while possibly disastrous to the parties immediately concerned, is likely to be innocuous in so far as it affects the social organism. But, of course, we are not here conecrned with mere sporadic errors of fact; it is not to be expected that they will be entirely eradicated. When we consider th limitations of human memory and the fallibility of human judgment, an approximation to the truth in the long run is all that may reasonably hoped for. If, however, aside from these inherent diffi culties, which we can not hope fully to overcome, there arises a con dition as a consequence of which the courts are left in serious doubt whether, as a rule and not merely in exceptional cases, their findings upon cardinal issues are founded upon the truth, the evil which must ensue is immeasurably greater than that which flows from the adoption of an incorrect principle of law. Society may effectively protect itself against the continuing authority of a bad precedent through the power of public sentiment, or, more summarily, by the positive mandate of statutory law, but as against a prevalent indisposition of witnesses to speak the truth when under oath, it is without practical remedy. In discussing the civilization of the middle ages, Hallam comments upon the wide prevalence of judicial perjury, and remarks that undoubtedly the irrational "trial by combat was preserved in a considerable degree on account of the difficulty experienced in securing a just cause against the perjury of witnesses."

From the civilization of today to that of the middle ages is a far call, but some of the problems that vexed our ancestors are still unsolved. Naturally no reliable statistical statement can be made of the extent to which perjury prevails in our courts, but that it is frequently committed no one with experience at the bar or upon the bench can for a moment doubt. Not so very long ago, in an address before the Academy of Social and Political Science, a leading member of the New York bar declared it to be his belief that perjury is committed in the trial of at least three out of every five cases involving an issue of fact. We may or may not be able to give our assent to so high a percentage, and in the absence of statistical information it is perhaps unwise to attempt sweeping generalizations. Any estimate can be properly regarded as little more than a personal impression derived from an observation necessarily limited in place, and not infrequently confined to certain classes of litigation, possibly not fairly representative of the whole. Even in the sharper conflicts of testimony allowance must, of course, be made for the misunderstandings, mistakes, and caprice of memory to which all witnesses are subject, however, high their character. But if we exclude all cases where there is innocence of motive, and consider only willful perversions of the truth, it cannot be doubted that false representation of the facts in judicial proceedings is distressingly common. Cases are not infrequent where the court may, with propriety, and counsel must, candidly say to the jury that the testimony is hopelessly conflicting, and that the conflict is explainable only upon the theory that some witness or group of witnesses has wilffully testified falsely. And the amazing variance between the averments or denials contained in verified pleadings and the facts as disclosed upon the oral examination of the verifying party would be shocking if it were not so common. The readiness with which witnesses yield to the temptation to falsify the facts is well exemplified in a simple experience which few lawyers who try cases at the bar long escape. Is there one of you who has not been chagrined and put to confusion by having a witness, after relating to you the substance of what he knows about the case, go from your office to the witness stand and there, under cross-examination, upon being suddenly confronted with the stock question, whether he has talked with anyone about the case since he was subpoenaed, astonish you with a flat denial? To be sure, the falsification is of a non essential matter, but as indicative of the susceptibility of the witness to yield to the temptation to withhold the truth, is it not highly and discouraagingly significant? Inferring from the form of the question and the manner of the interrogator that his interview with counsel was improper, he chooses to commit perjury rather than frankly disclose the supposed impropriety.

If we proceed to an inquiry whether or not the evil is on the increase, we are again without sufficient statistical information from which to draw any reliable generalization. Sensational declarations by popular writers and speakers who have had little opportunity to observe or know can be neither proved nor disproved, and are of little value. But we are not wanting in respectable opinions from competent and conservative sources that within the last generation, in some fields of litigation at least, perjured testimony has been given with increasing frequency, and to this view I am inclined to give assent. It would be aside from my present purpose to enter upon a discussion of the reasons for entertaining such an opinion or fully to consider the social or moral conditions which are thought to be giving impetus to the evil tendency. While I speak particularly of perjury in our own country, it is not to be inferred that we are necessarily worse than other peoples. I do not stand with those who, finding imperfections in our own laws and judicial practices, often with more zeal than information proceed to make invidious comparisons with other countries, always assuming perfection in that which is foreign, and for that reason generally less well known. Just now it is quite the fashion to compare our institutions and ethical standards with those of Great Britain, greatly to our discredit. I have already referred to the universally admitted prevalence of perjury in England during the middle ages, but as late as 1879 it was said by no less a person than Lord Justice James that there were "hundreds of actions tried (in England) every year in which the evidence is irreconcilably conflicting, and must be, upon one side or the other, wilfully and corruptly perjured." Last year an eminent trial judge opposed the law abolishing the practice of kissing the book, giving as a unique, if not strictly logical, reason for his opposition, that by requiring witnesses to kiss the book, the microbes would get some of the multitude of perjurers who would otherwise escape punishment entirely. The truth is that human nature is essentially the same in our modern occidental civilization, regardless of differences in social characteristics and political institutions, and the incentives to perjury and the barriers against it are found to prevail with much uniformity of strength. Standards of morality, conceptions of honor, the sanctions of an oath, are substantially the same whether we be at home or in England, or in some other European country. In any event, the relative extent of the evil is not of present interest; we are immediately concerned with conditions only as we find them within the sphere of our own activities and influence.

Without further preliminary discussion, I am sure we may assume as admitted that judicial perjury is a menace to the social well-

being, that it is widely prevalent, and that, to say the least, it is not on the decrease, and proceed to the point with which we are chiefly concerned, and that is the relation which the lawyer sustains thereto, and his duty in the premises.

While it is thought that the attorney is under a meas ure of obligation, it is neither just nor wise to attempt to shift to him the whole responsibility, as is the disposition of those who seem to hold the entire legal profession in low regard. Generally speaking, attorneys do not procure or instigate a falsification of the facts. Some exceptions there are, it must be admitted, as there are in all high callings, but it may be assumed that lawyers who suborn perjury are not present, and I have no disposition to insult your self-respect by characterising their conduct. A summary disposition may be made of their case, for their responsibility is admitted, and their duty, if it is not to importune admission to the penitentiary, is at least forthwith to get out of the profession. And incidentally it may be remarked that the obligation is upon all of us, both bench and bar, so far as within us lies, to see that the duty is performed.

As a rule the responsibility for perjury must be held to rest primarily not with the attorney in the case but with the party or witness who gives false testimony. If court and counsel are in a degree to blame, the dereliction is generally one of a duty owing to society at large, and not to the perjurer. Most witnesses are possessed of sufficient intelligence to know that willful falsification is in violation of the laws of both God and man, and should not in the public mind be permitted to escape responsibility for their conscious obliquity upon the specious plea that no barrier was raised across their wrongful course. There are circumstances, to some of which I may advert, where the private duty of counsel may extend to expressly warning and guarding a client or witness against the making of false statements, but it would be harmful doctrine to hold that because he is learned in the law the attorney, in matters the moral quality of which is easily cognizable by the simplest mind, is the keeper of the conscience of everyone with whom he deals. While in arresting the progress of a widespread tendency in society to violate a given law it may sometimes, for the sake of the example, be a wise policy in the outset to direct attack more especially against the most conspicuous transgressors, yet care must be taken in the moulding of public sentiment, lest that which is openly condemned when done by the prominent man is tacitly condoned when done by the common man. Equality of opportunity implies equality of responsibility, and we must not permit moral distinctions to be made where none exist. No sentiment could be more pernicious than that which

excuses in us, as ordinary citizens, practices the immorality of which we are capable of fully appreciating, merely because others of greater prominence or grfeater wisdom resort to, or profit by, or fail to denounce, similar practices. Popular condonation of that sort assumes a species of incompetency or moral inferiority on the part of the recipient of the favor, and is to be resented. A robust sense of self-respect should impel every man himself to shoulder the consequences of his own deliberate deeds; and to indulge a public sentiment that encourages or justifies a man in shirking his just responsibility and shiftfing it to another for reasons wholly adventitious must, if yielded to, sooner or later enfeeble his moral fibre and make of him a dependent weakling instead of a self-reliant upstanding man.

My point is that while it may be held that the courts and their officers, having a knowledge of the frequency with which perjury is committed, and, being in a position especially to appreciate its evil effects, have not done their full duty in checking it, their failure to come up to the full measure of their responsibility should not in the public mind be taken as in any wise extenuating the fault of the man who wilfully perverts or stands ready to pervert the truth. I desire to make it clear that I do not share in the popular idea prevailing in some quarters by which it is smugly assumed that the perjurer is commonly the dupe of the astute and unscrupulous lawyer. and if not the proper subject for pity, he should at least be treated with great leniency. Such a view is without basis of fact, and is pernicious in its tendency. The most harmful perjury is that committed upon the witness stand, and here where the witness may and usually does understand the import of questions asked and employs language of his own in replying thereto; the cases are rare where he can justly shift the blame for his falsification of the facts to the shoulders of another. And yet, considering the prevalence and the gravity of the evil, it is doubted whether we are fully sensble of our resposibility in the premises or fully meet the obligations with which we are charged.

As has been suggested, the mere private duty of an attorney, that which he owes to his client, may sometimes extend to guarding or warning him against the making of false statements. Reference is had more particularly to the matter of making affidavits and the verification of pleadings. While representations of fact thus made are not usually taken as the basis upon which final judgments are decrees are based, they often fulfill important functions in the course of litigation. I have long entertained the view that the bar is charged with greater care than is commonly exercised in seeing that such papers are faithful to the truth. Here it is easy to lead or per-

mit the ordinary layman to fall into error and subscribe to and verify statements which when fairly read convey impressions grossly inconsistent with the actual facts. In no other respect has the so-called reformed procedure in most of the states proved so great a disappointment as in the matter of verified pleadings. It was reasonably to be expected that by requiring the plaintiff, upon his oath, to set forth in ordinary and concise language the facts constituting his cause of action, and the defendant under oath to deny each controverted statement, the issues would usually be few and well defined. Upon the contrary, in actual practice is it not too generally true that pleadings are not characterized by a simple statement of the actual facts, but through circumlocution and generality of averment resorted to for the apparent purpose of evading an admission of that which is incontrovertibly true, the real issues are concealed from the understanding of the common man and left hopelessly vague even in the understanding of counsel and the court. There is need here for a radical reform and the responsibility rests largely with the bar. So persistent is the evil that it has been seriously proposed to take the preparation of pleadings entirely out of the hands of attorneys in the case and require litigants to appear before the clerk of the court or some special officer and there orally state their controversy, and thus present the issues. Under the present practice it is a proper and necessary function of an attorney to draft the pleadings, but it is his duty to take reasonable care first to learn the substantial facts from his client or from other sources, and then not give rein to his ingenuity in concealing them, but to his candor in expressing them. I cannot too strongly emphasize the view that as attorneys we should assume a measure of responsibilitiy for the substantial correctness of representations made in the pleadings. With a more lively consciousness of our obligations in this respect greater pains would be taken in learning the truth, and greater frankness and simplicity would be employed in formally expressing it. It is well known that many litigants, after stating the facts in their own way, will, without close scrutiny or analysis, verify such pleading as is put before them. They assume, and not entirely without reason, that it is a formal statement of the facts as they have represented them to be or as their attorney has upon inquiry found them to be. The evil of mis-stating or overstating or half stating the truth in a pleading not infrequently projects itself most harmfully beyond the mere function of the pleading itself. Upon being called to the witness stand, one who has verified a pleading, if conscious of its contents, will be strongly tempted to mould his testimony to conform thereto, even though he knows it to be incorrect, thus wilfully falsifying the truth and perpetuating an error for the purpose of escaping the con-

fusion and humiliation to which he conceives he would be subjected if his oral testimony were inconsistent with his verified pleadings. For perjury thus committed, is it not clear that the attorney who has carelessly permitted his client first to fall into error, must bear a measure of the responsibility.

While it may be a mere fancy, I have the impression that upon the equity side of the Federal Courts, where pleadings are rarely verified, they more nearly approximate a correct and candid statement or admission of the ultimate facts than do pleadings upon the law side, which are supposed to conform to the code practice. General Equity rule XXIV provides that: "Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that upon the instructions given to him and the case laid before him there is good ground for the suit in the manner in which it is framed." Might there not be some efficacy in a rule requiring that there be attached to every pleading of fact, a certificate of counsel to the effect that it states fully and fairly the material facts as they have been disclosed by the party upon whose behalf the pleading was filed, or as they have been obtained from other credible sources. While it may be held that in signing and filing a pleading the attornew impliedly makes such a representation, it is doubtful whether he is always conscious of his responsibility, and such certificate might, as an ever present reminder thereof, contribute to a more scrupulous regard for the obligation.

What has been said of the pleadings is in the main applicable to affidavits. Here the language employed is not unfrequently such that where affidavits alone must be relied upon for a disclosure of the facts, the court is left wholly in doubt as to just what such facts would look like if denuded of the mass of verbal drapery by which their form and outline are so effectively concealed.

It would not be just to conclude that as a rule attorneys consciously purpose thus to mislead or deceive the court or to withhold the facts. The great majority of lawyers desire to conform their conduct to a reasonably high standard of right and wrong, and have too much respect for themselves and their profession to deliberately do a mean or immoral act. Absorbed as he is in the details of his work and chiefly concerned as he must be with the ever exacting interests of his clients, the lawyer is always in danger of losing, for the time being, the true perspective of duty in its larger aspects. It is well for us at times to get down from the scaffold and, standing apart from that which we contrive, see whether it squares and plumbs with the great principles of right and duty by which every

man's conduct must ultimately be judged. Evil practices creep into the professions as evil customs grow up in the business and the trades. By currents, the trend of which is quite imperceptible at first, we are unconsciously carried away from the course which we have set for ourselves. And while such observations are pertinent to delinquencies of private duty, they apply with added force to obligations which the lawyeer owes to the court and to society at large.

If the lawyer conceives of his professional work only as a means of making a livelihood, if he wholly identifies himself with his client's interests, and in all respects subordinates his own individuality to that of his employer, if he regards the number of cases won and the net income for the year as the only standards of success, perhaps he will be little interested in and little perplexed by questions of public duty. But fortunately the bar as a whole is unwilling to submit to such a view of the attorney's status and is not ready to accept the theory that society has extended to certain of its members the privilege of following a high and responsible calling for the sole purpose of enabling them to earn a living. While it may be true that in some measure we have, consciously or unconsciously, yielded to the commercial spirit, it is equally true that upon the whole we have been unwilling, in theory at least, to let go the great traditions of our profession by which we are primarily ministers of justice, and the emoluments which we receive are but incidents of a service deemed to be highly honorable. Tendencies there are. however, in our modern life, in the very nature of certain common forms of professional employment, and in our adversary system of trying out the facts, which unmistakably make for the practical abandonment of the idea that a lawyer performs official functions; and unless these are held in check, while the theory that he is an officer of the court may remain as a convenient fiction, the lawyer will in fact cease to be a public officer and become an agent only for interests wholly private. It is in the recognition and discharge of the larger, though unfortunately less insistent, obligations to society implied in the official status of the lawyer that we are most in danger of falling short. Care must be taken lest we forget that before we became attorneys in the case we were responsible officers of the court and lest our proper loyalty to the truth give place to an immoderate and unrestrained zeal for the success of our client's cause, whether it be just or not.

That in the matter of judicial perjury the lawyer must himself refrain from participation or instigation we all admit, but does mere inaction upon his part fully meet the demands of duty and absolve him of all responsibility for the prevalence of the evil? May not

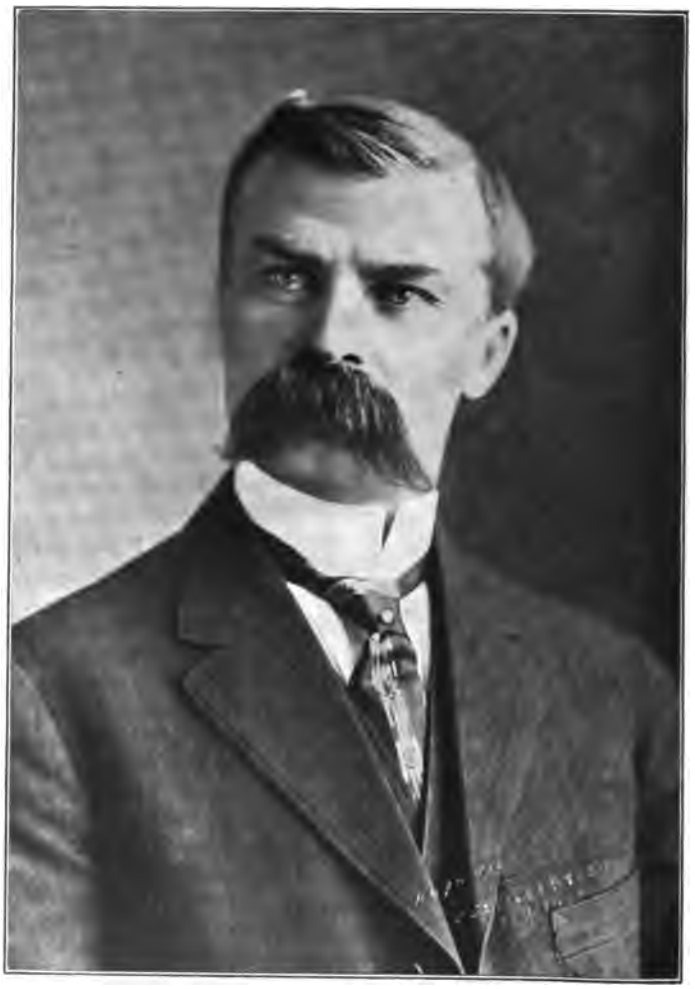
complacency sometimes fall dangerously near to complicity? And granting that the attorney does not engage to become the spiritual guide of his client or his witnesses, and rests under no obligation—to them—to restrain them from wilfully falsifying the facts, does it necessarily follow that his public duty extends no farther? If, as we have assumed, judicial perjury is widely prevalent, and if it pollutes the stream of justice and is a constant menace to the right administration of the law, can the bar remain inactive and be justified? These questions, especially as they relate to duty in its larger aspects as implied in the lawyer's official status, are of deep concern, and will, I am confident, upon fair consideration, be answered in the negative. To be sure, specific rules may not be formulated prescribing when and under what circumstances action shall be taken or what shall be done. Professional duty is often too delicate in its nature to admit of articulation in formal rules. But with a just conception of our general responsibility, we may depend upon the monitions of a vigilant conscience and a high sense of honor for suggestions of appropriate action, as the occasion presents itself. But, rules or no rules, it is of prime importance that there be a realization of the gravity of the evil and an aroused consciousness of our responsibility. The first great need is that the bar as a whole take an attitude and cultivate a spirit, not of resignation to the seeming inevitable, or of good-natured complacency, but aggressively hostile to the intrusion in any form of perjured testimony into our courts. It may well be, as is sometimes charged, that the courts themselves are in a degree to blame, in failing more often to direct criminal prosecutions where the offense is committed in their presence. A practical presentation of that subject would be of interest, but we are just now concerned with the distinctive responsibility of the bar. Not by way of defense of the courts, but to accentuate the point I urge, it may be remarked that of necessity those who occupy the bench come very little into intimate relation with litigants and their witnesses, and the influence which they can exert is therefore in the main necessarily restricted to the formal proceedings that may properly be taken in court. But criminal prosecutions for perjury are beset with the most serious difficulties, as anyone who has had anything to do with them will readily affirm, and unless reinforced by a powerful public sentiment make little headway in permanently dislodging a crime that has become strongly intrenched in custom. In a few instances, where the perjury has been committed in open court, as is most frequently the case, the offender has been proceeded against and summarily punished as for contempt, and doubtless a remedy of this character, if frequently invoked, could be made more effective than trials upon indictment before a jury. But if it be con-

ceded that such a method of procedure is at present without legal objections, already there exists a strong popular current of antagonism to the power of the courts summarily to punish for contempt without a jury trial, and unless such power is sparingly exercised it is in danger of being entirely withdrawn. My point is that, assuming all fidelity upon the part of the courts in inflicting criminal punishment, whenever practicable, the relief thus afforded is likely to be highly disappointing. In the absence of a proper public sentiment, criminal prosecutions affords but a clumsy weapon and a remedy wholly inadequate against an offense so common, so insidious, and so difficult of the requisite degree of proof as that of perjury. Immeasurably more effective as a deterrent than verdicts of juries or the fulminations of the courts, are sanctions of a vigorous and uncompromising public sentiment, and to that source we must ultimately resort for substantial and permanent relief. In the moulding of such a sentiment the bar may not improperly be looked to to take the initiative, and must necessarily play an important part, first, by arousing its own membership to a realization of the need of greater circumspection in guarding against and greater activity in checking, the evil practice; and, second, by plainly manifesting to those with whom we deal as clients and witnessees an uncompromising attitude of inhospitality to any inclination to withhold or falsify the facts; and then indirectly, through the press, from the pulpit and platform and in the schools and through other channels of information the general public must be reached and educated to a greater abhorrence of deception, fraud and falsification in any form.

If it be thought that the program suggested is hopelessly expansive, I can only say that I know of no short cut or royal road to moral reform. Chronic maladies are rarely cured by the application of specifics, and criminal practices so widespread as to have become immoral customs are not uprooted in a day. The judicial oath has come to have but litle virtue. Its religious sanctions, always of limited efficacy, have almost entirely lost their terrors, and not uncommonly the administration of the oath is looked upon as an idle form. If that be true, it follows, as the night the day, that if in the vocational life of a people the mechanic conceals his faulty work, the merchant resorts to false weights and measures, the farmer covers the musty hay in the middle of his load, and the manufacturer adulterates and misbrands his goods, they will falsify in court when self-interest requires, and it is futile to propose the total eradication of judicial perjury where such practices prevail. To suggest a remedy claimed to be universally effective would therefore be disingenuous in the extreme. But while we may not directly reach the source from

which the evil springs and dry it up forthwith, it lies within our power to check its harmful intrusion into the administration of justice if we rightly appreciate and are ready to discharge the responsibility that rests upon us to keep it out of the courts.

In closing permit me to make the specific suggestion that every self-respecting member of the bar owes it to the profession, by word as well as by act, to resent and to disabuse the public mind of that traditional and persistent error that however high may be a lawyer's standard of morality in his private life, he must, and as a matter of fact does more or less commonly compromise with evil in the practice of the law, and must and does employ trickery and chicane in protecting and furthering his client's interests. The most discouraging aspect of the error is that it is frequently based upon the more or less popular assumption that the necessity for employing such ignoble means inheres in the nature of a lawyer's services, and the use thereof is therefore taken as a matter of course and little if any personal blame is attached to him who resorts to such evil practices. It is just such a low and unfounded estimate of the moral standard of the profession that gives to the unworthy members thereof their opportunity and renders most difficult the often delicate task of him whose purposes are clean, of correctly drawing the line between the behests of duty and honor and the full measure of the services which a client may rightfully demand. Indeed, there is no other one influence that so generally and efficiently conduces to such evils as infest the practice of law as the ceaseless dissemination of the idea, sometimes in jest and sometimes in malice, that the average lawyer may be counted upon to do anything thought to be necessary to win his case. The result is that, consciously or unconsciously proceeding upon this assumption, litigants do not hesitate, directly or indirectly, to seek to enlist the services of an attorney in the accomplishment of unlawful ends, or in the use of unlawful means, whereas if a different sentiment prevailed they would fear to make demand for services involving indirection or positive dishonor. It is all very well in theory to say that attorneys should repel such suggestions, and so they should and so they generally do, but to do this the highest order of courage is often required, and all attorneys are not, any more than men in other callings, of heroic mould.



HON. T. J. WALSH

THE RECALL OF JUDGES

HON. T. J. WALSH, HELENA, MONT.

The public discussion of the subject of the recall of judges has served again to bring into the limelight how widely men differ in their estimate of the capacity of the people for self-government. Not a little of it has been more or less acrimonious. The Chief Executive of the Nation finds it an innovation of so pestilential a nature as to justify the exclusion from membership in the sisterhood of States of a Territory whose people, preparatory to their entry into the Union, framed a constitution recognizing the principle. It has even been advanced that such a constitution would operate to characterize the government to come into being under it as other than republican, the form which the United States, under their fundamental law, guarantee to every State in the Union. If this view be sound, it follows that it is incumbent upon the Federal Government to interfere in some manner in the case of any existing State that shall adopt this reform, as it is denominated by its friends, until the obnoxious principle is eradicated.

The overwhelming influence of the profession of the law in every department of the Government has often been noted. It monopolizes the judiciary, as a matter of course. Of the ninety-two members of the National Senate sixty-six have been admitted to the bar. The lower house will show as high a proportion. The President is a lawyer, as were all except two of his predecessors for fifty years. Every member of his Cabinet but one is a trained lawyer. In a less marked degree, perhaps, but nevertheless to a very considerable extent, are the affairs of the States guided and directed by the members of the legal profession. Three of the four governors who have been elected by the people of Montana since her admission into the Union came from its ranks. It is beside the present purpose to consider why this is so. Its obvious significance is that lawyers give concrete expression to the convictions of the public on political questions, however influential they may be in the development of such. A general concurrence in thought, at least, must be assumed.

There is very little reason, accordingly, to fear the general acceptance of any innovations in the machinery of government that does not commend itself to the intelligent and progressive members

of the bar. As to the method of the choice or dismissal of judges it is reasonable to believe that the usual deference paid to their views on related questions would be heightened to such an extent as to leave in their hands practically a veto upon any plan proposed. This responsibility carries with it a corresponding obligation to be informed upon any change seriously agitated. It occurred to me, following these reflections, that you might listen with some patience to a brief disquisition upon the recall in its application to the judicial office.

It is nowhere proposed to make the principle of the recall specially applicable to judges, but in the general assault upon the system it is insisted that, at least, an exception should be made in the case of such officers and it is in connection with them particularly that it is urged that it offends against the requirement of the Constitution that the government of each State shall be republican in form. As to this claim there is not in it sufficient of substance on which to hang any thing that can be dignified as argument. To advance it is to excite distrust of any accompanying comment on the expediency or wisdom of the proposed departure from the prevailing order. In the presentation of this feature of the subject it is usually coupled with the initiative and referendum, the group of related innovations, it is said, operating to characterize any scheme of government of which they are essential parts as democratic in form as contrasted with a republic.

In this connection profuse reference is made to comments of various statesmen of revolutionary times, warning or denunciatory in character, on the evils and perils of unrestrained democracy and on the necessity of an independent judiciary. It is ventured that the clause of the Constitution appealed to was inserted as a safeguard against the dangers that inhere in the democracy, one of which is the destruction of the independenc of the judiciary, a result which, it is assumed, will ensue when the judges are subject to be recalled by the people who elect them. Until this ingenious theory was advanced it was quite generally, it might be said universally, believed that the word "republican," as employed in the clause in question, was used by way of contrast to "monarchical."

It was dread of pretensions to kingship which might be set up in some of the States that inspired the provision to which reference has been made, if the testimony of history is of any consequence whatever. It is companion to that part of the last clause of the ninth section of the first article prohibiting Congress from granting any title of nobility, and the corresponding provision of the tenth section, forbidding

the States making any like grant. Referring to those provisions conjointly, Cooley says:

"The purpose of these is to protect a union founded on republican principles and composed entirely of republican members against aristocratic and monarchial innovations." (Cooley on Const. Lim., 28, 6th Ed.

Whatever persuasiveness there might be in the line of alleged reasoning by which the conclusion is reached that the systems adverted to affect a State government with a fatal anti-republican character, must appertain to the initiative and referendum, not to the recall. The former secures what has been appropriately called direct legislation by the enactment of a law in the one case and its nullification in the other. Therein lies the vice, as it is claimed, of the system, the essential characteristic of a government republican in form being, it is said, that its laws are made by delegates or representatives of the people, not by the people themselves, except as they are so represented. The recall, on the contrary, has no reference to direct legislation. It has its field only in the case of representatives chosen to make the laws, to construe them or to administer them. It can operate only in a government which is republican in form. It is coupled in the public mind with the initiative and referendum only because it is the purpose of both systems to secure a higher degree of faithfulness on the part of the legislative representatives.

By the initiative and referendum, the people undo what their representatives have done amiss, as they believe, or enact such measures as they have been remiss in omitting to sanction. The primary purpose is not to supplant but to supplement the representative system that it may be more truly representative. The incentive to procure legislation by corrupt measures is largely withdrawn, it is argued, when the product must run the gauntlet of popular approbation, to which it may be subjected by the referendum. Indifference to the demands of the people in the matter of legislation, often enforced by platform pledges, will vanish, it is contended, when the certainty confronts the legislator that they will be secured anyway through the initiative. By the recall he is displaced with a view to obviating the necessity of a resort to the initiative or referendum or as a penalty for compelling it.

However, then, the system of direct legislation may encroach upon the essential character of a republican form of government, the recall is not amenable at all to the strictures of its critics in that direction. It is sufficient to say, in passing, that the Supreme Court of Oregon, in an opinion written by Judge Bean, since appointed United States

district judge, in which all of his associates concurred, has held that the argument is unsound and untenable even as addressed to the initiative and referendum. (Kidderly v. City of Portland, 74 Pac., 710.) It would be surprising if any court did reach any other conclusion, in view of the prevalence of the town-meeting system throughout New England at the time of the adoption of the Constitution, a feature of the State government which, still persisting, has been extolled as "the wisest invention ever devised by the work of man for the perfect exercise of self government and for its preservation."

It apparently did not occur to the fathers of the Constitution that those States in which the people were permitted to legislate directly in respect to certain affairs, where the method of a pure democracy constituted a part of their system of government, were, by reason of that fact, ineligible to membership in the Union. They were all admitted, yea, invited to come in, with such local governments as prevailed among them. By the very act of admitting their Representatives in Congress that body determined that such existing governments were republican in form; and so with respect to the systems devised by the people of the new States as they were severally taken into the Union. In Luther v. Borden (7 How., 1) the Supreme Court of the United States said:

"When the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recog nized by the proper constitutional authority."

The extreme to which the people of a State may go in forming a scheme of local government, without transgressing the provision of the National Constitution which admonishes them that it must be republican in form, may be gathered from the fact, a circumstance involved in the case last above referred to. that Rhode Island, unlike the others of the original States, adopted no new constitution, pursuant to the recommendation of Congress upon the adoption of the Declaration of Independence, but proceeded under the charter granted by Charles the Second in 1663, without such changes as were necessary to adapt it to their condition and rights as an independent State. It took a rebellion to change the antiquated system which was recognized for over half a century, whatever its vices and weakness may have been, as, at least, republican in form. It will be impossible to condemn any State constitution as anti-republican if a parallel can be found for the supposed obnoxious feature in the constitution of any one of the thirteen original States as it existed at the time the Federal Government came into existence.

So the United States Supreme Court said in Minor v. Happersett (21 Wall., 162), using the following language:

"No particular government is designated as republican; neither is the exact form to be guaranteed in any manner especially designated. The guaranty necessarily implies a duty on the part of the States themselves to provide such government. All the States had governments when the Constitution was adopted. In all the people participated to some extent through their representatives elected in the manner especially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution."

Let this test be applied to the recall as it affects the judicial office. At the time the Constitution was adopted, in no instance was either the governor or any of the judges elected by the people. The latter were uniformly either appointed by the governor or elected by the legislature. In New Hampshire, Massachusetts, Connecticut, Rhode Island, Pennsylvania, and South Carolina they could be removed by address of that body, a majority vote sufficing in Rhode Island and Pennsylvania. Bear in mind, by address—not by impeachment. While impeachment proceedings contemplate definite charges and a trial, neither the one nor the other is requisite in the case of removal by address. A simple vote ends the official career of the individual against whom it is successfully leveled. This method of terminating the official life of the incumbent of a judicial office was borrowed from the English system, under which, since the revolution of 1688, judges have been and still are removable by a majority vote of each house of Parliament. In Rhode Island the tenure was even more precarious, a majority of all the members in joint committee sufficing to accomplish the retirement of a judge. The constitution of that State, adopted in 1842, superseding the old colonial charter, provided that—

"Each judge shall hold his office until his place be declared vacant by a resolution of the general assembly to that effect."

The ancient patent under which the colony was originally governed gave to the inhabitants "the power to place or displace officers of justice as they or the greater part of them shall be free consent agree to."

Confessedly, Pennsylvania and Rhode Island came into the Union enjoying a "republican form of government." So that to mantain that a constitution embodying the recall applicable to the judicial

office is anti republican we are driven to the conclusion that a State under whose fundamental law judges are elected by a majority vote of the legislature and are removable by a majority vote of the legislature is republican in form, while that State whose judges are elected by the vote of the people and who are removable by a majority vote of the people is not. That phase of the question may be dismissed. The question is exclusively one of political expediency.

As suggested before, it has never been seriously contemplated to make the recall applicable solely to judges, as might be gathered from some of the discussions in which the question has been involved. The inquiry presents the advisability of a general recall system and then an exception of judges from its operation. A very brief reference to the subject in its general aspect must suffice here. As to all purely administrative offices the question is not, perhaps, very important. It must be admitted that as to all such the system is ideal except in the contemplation of those who regard the people as fickle, vacillating, "unstable as water," and likely to embroil themselves in constantly recurring elections by continued resort to this method of relief from fancied grievances. Such an argument might be quite forcible as applied to the people of San Domingo, Venezuela, or Guatemala, but it is a reform to the adoption of which the people of the United States are invited—not those of Latin America, not a race of turbulent fanatics such as crowded the court of Herod, nor a primitive people like those that made "unstable Athens heave her noisy seas."

It is exceedingly difficult to understand why it is good business policy in every great corporation to retain, when it can, the right to dismiss its secretary, auditor, or treasurer at will, but is impolitic for the people to retain the right to dismiss a county clerk or a State treasurer when they see fit to do so. A business man or corporation is sometimes forced to enter into a long-time contract in order to secure or retain the services of a valued servant, but it is avoided, for obvious reasons, whenever unnecessary. Usually such contracts bind both parties. The public servant, performing similar services, has his employer bound, but he may escape the obligations of his service, at any time, by resigning. As to the legislative office, it affords such a check upon a career of corruption, regrettably not infrequent, particularly in municipal councils, as ought to commend it generally as to such. In this respect to such offices, a course of conduct extending over a considerable period of time may bring conviction of guilt to all intelligent observers that can not be resisted, and yet evidence sufficient to expel be entirely unavailable.

And why should a member who has violated the pledges under which he was elected, repudiates the measures to secure the passage of which he was delegated, and outrages by his votes the convictions of his constituents on great public questions, continue, against their will, as their alleged representative? In a neighboring State a member was lately elected to the higher branch of the legislature for a term of four years at an election at which the choice of a United States Senator was the paramount, not to say absorbing, question before the voters. He was returned largely because of his professions of allegiance to the popular candidate for that office, to whose cause he publicly and privately declared himself devoted. He voted for the local favorite for ten days of thereabout, and then deserted to become the leader of the forces of his antagonist, a man of great wealth who had the support of a giant corporation, believed to be the master of the political destines of the State, for whose legislative program the recreant member voted with striking consistence. He was overwhelmed with remonstrances from his constituents, and though they did not affect his course, he confided to some of his friends that he was opposed to the recall because if it prevailed he would be one of its first victims.

If it should be regarded as wise to punish the error of judgment on the part of the people of his county in electing him, by denying to them the right of recall, why should the interests of the rest of the people of the State be imperiled by his retention?

What ground is there for making any distinction in reference to those public servants upon whom devolve the judicial function? The expression "public servants" is used advisedly in connection with judges, upon the authority of the Supreme Court of the United States, which said, in Luther v. Borden:

"Judges * * * must enforce such (Constitution) as the people themselves, whose judicial servants they are, have been pleased to put into operation."

It is the theory of our Government that the whole body of the sovereign people, as though they were one sovereign, desire that justice should be administered and lawlessness punished. They employ and depute judges to perform the work for them. It is a speculation quite in keeping with the sacred character of the judicial office that regards the occupant of it, in a special manner, as the minister of divine justice, dispensing to each, with such feeble light as finite intelligence and judgment may, such measure as may be his due.

If we were to conceive his appointment to come from the Infinite Wisdom, we must likewise conceive that the recall awaits his first

lapse from rectitude. An error in judgment would be overlooked, not attributable to sloth or persistence in vices that cloud the reason. The decay of the faculties from advancing age or illness would call it into immediate action. The upright judge would have no occasion to fear its exercise until it would be merciful to employ it. Theoretically it is ideal, particularly in the case of judical officers, if we assume that the majority of the people have the intelligence and virtue to use it aright. At the time the experiment in self-government was first tried on this continent, they were not considered as pos sessing either in sufficient degree to make a wise choice of judges possible or likely by popular vote, and accordingly, as stated, in not one of the thirteen original States, at the time of the adoption of the Federal Constitution, were judges elected by the people.

Now, in thirty four of the forty eight States the judges are chosen by popular election. These include Georgia, which went to the elective system in 1798, the imperial State of New York, which followed in 1846, and North Carolina, which adopted the popular method recently. The overwhelming sentiment of the people of the United States is that the people of the States, respectively, are competent to choose their judges; and the experience of a century has fully justified that confidence. Irving Browne, in a review of the New York Court of Appeals, published in the Green Bag in 1890, said:

"I have given the names of more than one hundred judges, with particulars of many of them, nearly all of whom were first nominated by the people. I believe that under a system of appointment by the governor this test would not have been equaled in merit and distinction, and I point to it as a standing refutation of the argument that the people are not fit to name their judges."

The Federal system of appointment for life, as distinguished from the State system of election for limited terms, is commended in many quarters as immeasurably the superior. However it may be in other parts of the country, it is observed that in our section, at least, the Federal judges are selected very largely from those whose talents were discerned by the people, and who had by them been elected to high judicial position. Vandevanter in Wyoming, Field, Sawyer, Ross, and De Haven in California, Bean and Wolverton in Oregon, Hawley in Nevada, Hunt in Montana, and Rudkin in Washington, are of this class. There is not an argument that has ever been advanced against the recall of judges that is not equally forceful when applied to the election of judges by the people in the first instance.

The main contention, about which the argument invariably proceeds, is that the recall would rob or tend to rob the judge of his

independence, impelling him constantly, in his official acts, to court the favor of the people by consulting their hopes concerning litigation before him and conforming his judgments to the desires of the majority. That is exactly the line of argument that has been vainly pursued for over a century to stem the tide of democracy, as it involves the judicial office. Leonard Jones, in the course of some comments in the American Law Review, in disparagement of the idea expressed by Mr. Browne, above quoted, said:

"The worst thing, however, about the elective system is not the fact that it affords unworthy men the chance to obtain judicial office by purchase or other corrupt practices, but that it necessarily to a greater or less extent destroys the independence of the judges."

"What chance," he adds, "is there that a judge who is shortly to seek a re-election by the people will uphold the law and justice in a case where the popular clamor is against law and justice?"

What chance, indeed, unless he be a man and not a catiff! With that kind of a judge the argument has added force as it is directed against the elective system, because that kind of a judge is likely to solace himself with the reflection that so far as the recall is concerned it may not be invoked against him anyway, while if his term is expiring and he seeks re-election, he is up against it to a certainty. Moral courage is a quality cardinal in character in a judge. He is called upon to exercise it in the daily discharge of his duties. He is fortunate, indeed, if he is not obliged repeatedly, in his official career, to brave the enmity of powerful interests whose activity is more to be feared than an outburst of passion upon the part of a community or State against an upright public official who faithfully discharges his duty as he see it.

Even a Federal judge, unless he be free from every honorable ambition, or has reached the topmost round, is not exempt from these trials, as the testimony of Judge Purdy before the Sugar Trust investigation committee would seem to indicate.

It would be futile to attempt to devise a system that would sustain the spineless creature Mr. Jones assumes, very mistakenly, every judge to be. His pusillanimity is inveterate, and it would be wiser to trust to the people's finding him out. Pilate got his place by appointment and was in no way dependent upon the suffrages of the Jews to keep it. The desirability of independence in the judiciary all will concede, and obviously no unnecessary test, in addition to those inherent in the office, ought to confront the judge, lest there be found those whose moral stamina, sufficiently vigorous under other condi-

tions, would be found unequal to it. I am constrained to believed that in respect to litigated controversies in which the people at large take a decided interest, particularly those which give rise to or excite a class feeling, or are believed to have a political aspect, the evil is more likely to be that the side whose expectations are disappointed will assign the candidacy of the judge for reelection in explanation of the result, if he is a candidate, rather than that the outcome is likely to be influenced by any such consideration.

If the contest is between some wealthy and powerful litigants on the one side and someone supposed to represent or whose cause evokes the sympathy of the so called laboring class on the other, the unfortunate judge assumes the risk of encountering the accusation of the hasty and unthinking among the multitude that he is owned by the "interests" and looks to them to renominate or re-elect him; or on the other hand, that he is a truckling demagogue, bidding for the votes of the mob. As a general rule, subject to very rare exceptions, the general body of the people harbor no such sentiment and listen incredulously to the imputations made as the vaporings of an unsuccessful suitor. But let any such conviction obtain general lodgment in the minds of men and a situation arises that is not only to be deplored, but which calls for action, for at the very foundation of orderly government must be found the highest confidence in the administration of justice in the courts. Undermine that and the whole edifice of representative government totters, and there remains no alternative but resort to a government of force.

Herein lies, in my judgment, the weakness of the Federal judiciary. The judge is believed to be utterly independent of the people. He does not owe his appointment to them, nor does he look to them for advancement. No reason can ordinarily be conceived why he should incline his judgments to their supposed will in any case, and he is accordingly exempt from any suspicion in that direction. If he decides a case in such a way as to meet popular approval, the incident is regarded as the natural result of the equities of the case, and is speedily forgotten. But when the case turns in the other direction, the opportunity to attribute to sinister influences its outcome is by no means wanting. Setting aside the idea of corruption in its graver form, or in its milder manifestations, as disclosed in the Swayne impeachment proceedings, it would be idle to attempt to disabuse the public mind, in this day, of the notion that the great interests, insidiously, perhaps, but none the less effectively, exercise a potent influence in the selection of Federal judges.

While this believe prevails, a suspicion affecting his predilection is

easily engendered by a course of decisions, whether right or wrong, by a Federal judge, avoring such interests. The social aspect is not an unimportant one. By the method of his selection and the character of his duties he is apart from the general mass of men, who naturally assign as his associates and confidants the more opulent and influential, whose prejudices he imbibes and whose views he the more readily adopts. These are some of the considerations which have given rise to the belief, prevalent in some quarters, that the Federal courts are a haven for the big corporations that are more or less inclined to rapacity.

The Federal system certainly secures, in the very highest degree possible, the independence of the judges—that is, it makes them independent of the people. The system can not be regarded as perfect, however, if the national courts fail to win and maintain the confidence of the great mass of citizens—unless the people feel that those courts are theirs, the judges thereof their judges, doing their work. One distinguishing merit of the recall as applied to judges is that it operates to permit the restoration of public confidence in the court presided over by a judge against whom it was invoked. Why should a judge, guilty of habitual intoxication, for instance, be permitted to continue in office, passing upon grave questions affecting the lives, liberties, and fortunes of citizens, until his term expires or he is removed by the slow and uncertain process of impeachment? A day is too long for him to sit bringing to the duties before him a mind inert or befuddled from drink.

The Supreme Court of my State granted a new trial in Finlen v. Heinze (28 Mont., 548), because the undisputed evidence showed that the judge who tried the case, while hearing it, being more or less steeped in liquor, trafficked through a lewd adventuress with one of the parties to the action. Some chapters from the recent judicial history of this State might serve as well to illustrate the utility of a system through which could be secured the prompt elimination of a judge whose conduct was such as to excite deserved public reprobation. Had not the erring justice who fled before the wrath of this association, kindled at the disclosure of his intrusting to counsel for one of the parties in a suit before him, a corporation of great wealth, the preparation of the opinion of the court, voluntarily relinquished his seat, the people of Washington would have had abundant cause to be thankful had they been able to retire him under a recall.

Independence in the judiciary is undoubtedly a quality much to be desired. But we may pay too high a price to secure it. Undoubtedly

we do when we keep on the bench the obviously unworthy and unfit judge lest that class, small, as I insist, at best, in whom fear of their political future is the ruling passion, might be swerved from the path of right. Independence is not a character essential alone in the judicial servant of the people, as might be imagined from the discussion of the subject before us. All public officers are required to exercise it in varying degree in the proper discharge of their duties. The governor of the State, the President, is supposed to be equally deaf to what is called "popular clamor." They enforce the law against rich and poor alike, high and low. It was this quality which endeared Andrew Jackson to the American people and gave to Theodore Roosevelt a popularity perhaps no less widespread. A prosecuting attorney will find daily exercise for the same virtue. It made Folk and Hughes national characters.

And yet I can not think of an officer against whom the recall might be more appropriately invoked than a recreant prosecutor who pursues the outcast and winks at the crimes of the high and mighty. He might, of course, be deterred by selfish political motives from proceeding against lawless stikers who shed innocent blood or wreck property, but I should rather fear his being appalled by some franchise grabbing plunderbund or domineering industrial corporation that finds gain in operating in violation of law. The youth of this State are being taught by Prof. Smith, holding the chair of political science in its rising university, that the "independenc of public officials which our forefathers were so anxious to secure has been found to be a fruitful source of corruption." "A realization of this fact," he says, "has been responsible for the introduction of the recall system under which the people enforce official responsibility through their power to remove by a vote of lack of confidence."

Our political forefathers were wise men, patriotic men. Amidst the wreck of the old order, involving social relations as well as political institutions, they studied to excellent purpose the history of government and the contributions to literature of those who had examined into its philosophy. They confessed their first attempt at organizing a national system a failure. The various State constitutions they hurriedly threw together, as a rule, speedily gave place to more carefully planned and consistent systems. A review of these early charters would reveal not a few notions concerning the proper province of government now universally discarded, some of them abhorrent to the general sense of our age.

But one thing among many in the science of government which they did learn and know is that all power is liable to be abused and

that there is a fatal tendency in most men in whom it is invested to use it tyrannically. They recognized that there was reposed in judges a vast power and that in the nature of things it must be exercised without fear of personal responsibility, as in the case of administrative or executive officers who are required to answer for any abuse of the power with which they might be charged. They had in mind the career of Jeffreys and the provisions made by the English people in the act of settlement against the recurrence of such a type on the bench, whereby judges were removable by the vote of the Lords and Commons.

According, in the case of nine of the thirteen States, as their government was admistered at the time of the adoption of the Federal Constitution, judges were made removable by address, special provision being made for the case of that class of officials, usually in addition to a general provision for the impeachment of all officers. As a general rule, a two-thirds vote was necessary, but in Rhode Island and Pennsylvania a majority, as heretofore stated, sufficed. The two methods of removal were provided because impeachment was available only in the case of a culpable violation of law. High crimes and misdemeanors only warrant impeachment under the Federal Constitution. Besides, impeachment implies a formal accusation, a trial and proof.

The evidence may be hard to get, the offense not grave enough to be a crime and yet serious enough to condemn a judge at the bar of intelligent public opinion. It is a trite saying that a virtuous, law-abiding man does not becom ea criminal in a day—that character is a growth and the loss of it a decay.

As Wendell Phillips put it, "A man may be unfit to be a judge long before he is fit for the State prison." Thereby hangs an interesting tale. Massachusetts had from the beginning the dual method of removing judges, by impeachment and by address. It was in the very heat of the abolition movement that one Edward Greely Loring held, at Boston, at one and the same time, the office of probate judge, under the authority of the State, and the office of United States commissioner. By virtue of the last-named office, acting under the provisions of the fugitive-slave law, he had been instrumental in returning to his owner a runaway slave, the attending circumstances being exasperating to the people. A monster petition was presented to the legislature to remove him.

The great orator spoke for the petitioners and demonstrated to a certainty that the legislature had the power to remove Judge Loring,

though he had committed no crime, without hearing any testimony and without giving him any notice of the proceedings. He made clear how tenaciously the people of Massachusetts had clung to the power to which he appealed, since the Revolution. He told of the effort to amend the provision of their constitution in question in the famous constitutional convention of 1820, among the members of which were Justice Story, Chief Justice Shaw, Daniel Webster, and many other brilliant men. A majority of the members of the legislature elected sufficing to remove a judge under the constitution, it was proposed by a committee, of which Judge Story was chairman, to increase the number of votes requisite to two-thirds, the report insisting that the existing provision tended to impair the independence of the judges.

Webster asserted that proceeding without notice was against natural right. The subject was debated with profound ability by many of the great lawyers present, but none disputed the unlimited power of the legislature, or offered a suggestion that the feature in question be expunged. The convention voted down the amendment proposed, but submitted to the people an amendment providing for notice, which they rejected. And so this provision of the constitution of 1780 remains unchanged to this day. It reads as follows:

"All judicial officers duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is a different provision made in the constitution, provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature."

Notwithstanding the requirement of participation of the governor and council in the formal act of removal, both Story and Shaw declared that judges in Massachusetts held their offices at the will of the majority of the legislature, and so it appeared in Loring's case. For the legislature, having voted the address for his removal, and the governor neglecting to act, another governor was promptly chosen who did remove him.

The considerations actuating the people of Massachusetts in incorporating this provision in their constitution for the summary removal of judges have been regarded as persuasive by those of fifteen other States, namely, North Dakota, South Dakota, California, Kansas, Mississippi, North Carolina, Nevada, Ohio, Rhode Island, South Carolina Virginia, Washington, Wisconsin, West Virginia, Utah, and Illinois, though in most a two-thirds vote is necessary and notice to the judge attacked is essential. In New York, judges are removable

on recommendation of the governor, by vote of two-thirds of the senate.

The conviction seems to be quite general that the people should have some means other than impeachment to rid themselves of an unfit judge. The futility of resort to that method was demonstrated years ago. It has never been resorted to in England since the failure of the Hastings trial. Political considerations are likely to be paramount or, at least, are apt to exercise a decided influence in the deliberations of legislative bodies. The members are not required to be trained lawyers nor judges skilled in the analysis of evidence. An abortive effort was made to impeach the Montana judge whose evil reputation is perpetuated after his death by the report of the case above referred to.

In 1902, Judge Samuel Chase, an Associate Justice of the Supreme Court of the United States, was tried by the Senate and acquitted, though Schouler says: "He had made himself odious by his harsh behavior and irascible, overbearing manner. He went rampant on his spring assize, trying the important offenses committed within his circuit more like a frocked politician who seeks revenge than the minister of law and justice. He ranted before the grand juries as though in a mass meeting."

The heated political atmosphere, the clumsiness of the management of the case, and the patriotic public services of the accused are assigned as reasons for the result. In the Swayne case the defendant admitted that 'a railroad being in the hands of a receiver appointed by his court, he traveled, without expense to himself, in a private car belonging to the company, from the State of Deleware to Florida and from there to the Pacific coast and return, the connecting lines generously handling the car gratuitously. Yet he was acquitted.

The wisdom of some provision for the removal of judges other than by impeachment being conceded, the question arises, Where shall it be lodged; with the people direct or with the legislature? Arguing in favor of his resolution to amend the Massachusetts constitution on the occasion mentioned, Justice Story said the judge in that State—"does not hold his office by the tenure of good behavior, but at the will of a majority of the legislature, and they are not bound to assign any reason for the exercise of their power. This is the provision of the constitution, and it is only guarded by the good sense of the people."

He had no fear, he added, of the voice of the people when he could get their deliberate voice; but he did fear the legislature.

"A powerful individual who has a cause in court which he is unwilling to trust to an upright judge may, if he have influence enough to excite a momentary prejudice and command a majority of the legislature, obtain his removal."

Prescient man! Out of the profundity of his wisdom and learning he saw as through a glass, darkly, the Illinois Legislature with its "jack pot" a hoary tradition. "I have no fear of the voice of the people." And no other honest and upright judge need fear that voice. It is idle to talk about the judge being called upon to take the hustings to defend his decisions. If he can successfully defend his character and his conduct, his decisions will take care of themselves. The people will not require that he be right in his opinions, but that he be honest and decent in his life.

It might be said that there is more occasion for a recall provision in Massachusetts, where the judges hold during good behavior, than in jurisdictions where the tenure is for a limited time. But the tendency is to protract the terms of judges, particularly of the higher courts. In New York, the justices of the court of appeals are elected for fourteen years; in Pennsylvania the term for the corresponding office is twenty-one years; in Montana six. The shortest of these terms is a long time to tolerate a judge who needs removing. The decrepitude of age may come upon him unexpectedly early in life. Illness may overtake him and even render him unappreciative of his own infirmity. A Massachusetts judge was removed for such a cause. With the recall it is comparatively unimportant how long the term is.

One of the grounds of complaint against the elective system is the brevity, as a rule, of the terms, in consequence of which it is claimed the bench has no attraction to the best talent at the bar. The term could ordinarily be safely lengthened with a recall provision. In Oregon it is proposed to extend the term of members of the legislature to six years, but make them subject to recall at any time. Its most ardent advocates admit that it will be a long time until the recall enters the field of the national organization, but if any State is disposed to try the experiment, it is with confidence asserted that, upon reflection, no reason will appear why judges should be excepted from its operation.

RUSSELL L. DUNN

The Ownership of Property in The United States by The Federal Government--- Whether as Proprietor or Sovereign

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The ownership and jurisdiction of property by the United States preceded in point of time the establishment of the Federal Government under the Constitution. Soon after the Declaration of Independence in 1776, the question of the ownership of the unappropriated former crown lands in the settled territory of the States, and of the vast areas of unoccupied western lands beyond the settled territory and extending to the Mississippi River, became a very important political issue between the new States.

Six of the States, New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware and Maryland had well defined limits of territory. These States all contained either unoccupied former crown lands or else contained unoccupied proprietary lands, to the title and jurisdiction of which they had succeeded. The Treaty with Great Britain at the close of the war confirmed the title to the former crown lands, and Pennsylvania, several years after the treaty was ratified, paid the Penn heirs for their proprietary claim.

Connecticut, bounded by New York, Massachusetts and Rhode Island, had no unoccupied former crown land within these boundaries, but had extensive claims, based on its original Colonial Charter, to what were known at that time as the Wyoming lands in the territory claimed by Pennsylvania, and to unoccupied land extending west from the northern end of the western boundary of Pennsylvania to the Mississippi River.

The other six States, Massachusetts, New York, Virginia, North Carolina, South Carolina and Georgia, in addition to considerable areas of unoccupied former crown lands and Colonial Proprietary lands, had claims, based on their original Colonial Charters and grants, to unoccupied western lands. These claims covered the entire unoccupied territory and were very conflicting through overlapping boundaries.

The smaller States, those having no claims to western land, were

inclined to hold that the unoccupied western lands should not belong to the States claiming them by virtue of their Charters as Colonies, but to the United States by conquest. They desired that the western lands should be common property of all of the States through ownership by the United States. It was, however, rather the proprietary ownership which they desired for the United States than the judris diction. The stronger incentive suggesting their proposals was commercial rather than political. They wanted the United States to have the cash proceeds from disposal of the land primarily, and were less insistant that the United States should take the jurisdiction. The smaller States also were apprehensive of future injury to their interests from the overwhelming preponderance of financial and political power which they believed would be gained by the States of greater territorial extent, when the vast areas of western land which they claimed became settled and developed. The propositions presented by the smaller States were not accepted by the larger States. They declined to make a cession of their crown lands retaining the jurisdiction, nor would they consent that any State should be deprived of territory for the benefit of the United States.

Out of these conditions, the fears of the smaller States that the larger States would, through their land possessions, gain too much political and financial power, and the difficulty of satisfactorily settling the conflicting claims of the larger States to the unoccupied west ern land, came the compromise, accepted by all of the States, which gave the United States the proprietary ownership and jurisdiction of the western lands before the ratification of the Constitution created our present Federal Government. The compromise recognized the proprietary ownership and jurisdiction of the original States to their respective claims of western lands, but provided that the States should cede both title and jurisdiction of these lands to the United States for the common good of all of the States. All of the seven States having claims to western lands made the cessions as was agreed. New York making the first cession in 1781, and Virginia making the second cession in 1784, the United States became the proprietary owner and sovereign of all the land north of the Ohio River and west of Pennsylvania, without there being any provision in the Articles of Federation of the States for the acceptance of the deeds of cession.

The land question seems to have been the first of the great internal political questions of the United States to reach a temporary settlement by the adoption of a definite common policy by the States. Also, it seems probable, that the settlement of this land question by vesting in the United States title and jurisdiction to the vast area of western lands, contributed materially to bring about the acceptance of the Constitution by the several States.

At the time of the settlement of this land question, there does not appear to have been any uncertainty as to the nature of the property ownership to which the United States had succeeded. The property was unoccupied land. The distinction between the proprietary ownership of the soil and jurisdiction over it as sovereign territory was sharply defined.

New York and Massachusetts settled between themselves, outside of a special court of land claims which the Articles of Confederation of the States had provided, a disputed claim to a tract of land which by the settlement became a part of western New York. In the settlement, Massachusetts, a sovereign State, took the proprietorship of the soil, and New York, a sovereign State, took the territorial jurisdiction. Massachusetts, who had claimed the territory both as proprietor and sovereign, gave up the sovereignty to New York on the latter conceding to Massachusetts the proprietorship. Massachusetts soon after sold the land and thus removed itself as proprietor under the jurisdiction of New York.

Connecticut, in its first deed of cession, did not include the tract in northeastern Ohio which is still known as the "Western Reserve." This tract was included within the cession of Virginia but the United States made no objection to the reservation which Connecticut made. Connecticut, after disposing of her proprietory ownership, part by donation to certain of her people, and the remainder by sale to a private land company, proposed to Congress to make a cession of her jurisdiction to the United States. This was in 1797. In 1800 Congress accepted the cession of the jurisdiction and in 1802 passed the jurisdiction, that is to say ceded it, by its Act of Admission of the State of Ohio. The United States thus never had any proprietary ownership of this portion of Ohio.

Virginia made no cession to the United States of her land west of the Alleghany Mountains south of the Ohio River, although she ceded soil and jurisdiction of her entire claim north or northwest of the Ohio River. In 1790, Congress included the territory of Virginia south of the Ohio River in a temporary governmental district with the territory ceded by North Carolina. In 1792, with the consent of Virginia, for which there is provision made in the Constitution, Congress admitted this unceded territory as the State of Kentucky. The State of Kentucky thus succeeded directly to the jurisdiction of the State of Virginia, and the ownership of the soil, the proprietary ownership, deraigns directly from grants made by the State of Virginia. The United States never possessed either a proprietary ownership or jurisdiction of the territory now Kentucky. It is also an interesting fact

that Kentucky was admitted as a sovereign State without at the time having adopted a State Constituion.

Massachusetts made a deed of cession including both soil and jurisdiction to the United States of her claim to western lands, but retained the soil and jurisdiction of Maine, that is of the territory now the State of Maine, until 1820, when, Massachusetts consenting, Congress admitted Maine as a sovereign State. The jurisdiction to which the new State of Maine succeeded was the jurisdiction of the State of Massachusetts, and Massachusetts at the same time ceded the proprietary ownership of the unoccupied lands to Maine. The United States never possessed either proprietary ownership or jurisdiction of the territory now the State of Maine.

Vermont is another State becoming one of the Union, though not one of the original thirteen, without the United States having had either a precedent jurisdiction or proprietorship of its territory. It was admitted in 1791 by consent of New York, although its people had an organized State Government claiming jurisdiction from 1777. Vermont made a cash settlement with New York of the latter's claim to jurisdiction.

All of the thirteen original States, by their ratification of the Constitution ceded to the United States a limited jurisdiction over navigable waters within their boundaries. The particlar jurisdiction provided in the Constitution did not carry either jurisdiction or title to the soil under the navigable waters. This limited jurisdiction was at the same time, and by the ratification, ceded over the navigable waters in the territories of States which were afterwards admitted. These cessions included the navigable waters in the territories which became Vermont, Maine and Kentucky. They also included jurisdiction over the navigable waters in the territorial claims of South Carolina, North Carolina and Georgia. Other than the original thirteen, Texas is the only State, which by ratification of the Constitution, ceded jurisdiction to the United States over the navigable waters within its boundaries. In all the other States, those becoming such by virtue of the several Acts of Admission, the jurisdiction over navigable waters was reserved in the respective acts.

The purpose of the cessions of soil made to the United States was well understood at the time. It was to provide the Government of the United States, from the proceeds of its disposal of the land, with a common fund from which it could pay the common debt contracted in the war with Great Britain. The purpose of the cessions of jurisdiction was likewise well understood at the time. It was to terminate the conflicts of jurisdiction between States whose territorial claims

overlapped, so as to eanble the United States, for the common political benefit and general good, to organize additional states which would be admitted to the Union with the same sovereign rights as the existing States. Where there was no conflicting jurisdiction, this purpose could be and was carried out by the State having the jurisdiction, the other States in Congress assembled consenting. In the ultimate analysis then, the deeds of cession appear not to have been made primarily to give the United States a jurisdiction over territory, which by the express terms of the deeds of cession could only be temporary, until the admission of the territory as a sovereign State after a certain minimum of population was reached, but were primarily made to vest a proprietary ownership of soil from the disposal of which a common fund would be derived for a particular purpose, the payment of the contracted war debt of the United States.

Both purposes were expressed in the formal words of Resolutions adopted by Congress in 1780. The first of these Resolutions was addressed to the Legislatures of the States claiming the unoccupied western lands, and recommended to these States that they yield up a portion of their territorial claims for the common benefit. The second Resolution declared:

"That the unappropriated lands that may be ceded or relinquished to the United States, by any particular State, pursuant to the recommendation of Congress, * * * shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom and independence, as the other States: * * * That the said lands shall be granted or settled at such times, and under such regulations, as shall hereafter be agreed on by the United States, in Congress assembled. * * *"

Both purposes were expressed in the deed of cession by Virginia of her territorial claim northwest of the Ohio River made in 1784. The Commonwealth of Virginia by this deed conveyed:

"Unto the United States in Congress assembled, for the benefit of the said States, all right, title and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country within the limits of the Virginia Charter, situate to the northwest of the river Ohio, * * * upon condition that the territory so ceded shall be laid out and formed into States, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, * * * and that the States so formed shall be distinct republican States, and admitted members of the Federal Union; having the same rights of sovereignty, freedom and independence, as the other States * * *.

That all the lands within the territory so ceded to the United States, not reserved for, or appropriated to, any of the foregoing purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederation or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever."

The deed of cession by Georgia, made in 1802, long after the ratification of the Constitution and establishment of the Federal Government, declared the same purposes in nearly identical words. This deed declares that after satisfying certain specified payments and grants, that all the lands ceded by it to the United States:

"Be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: * * *

That the territory thus ceded shall form a State, and be admitted as such into the Union, as soon as it shall contain sixty thousand free inhabitants. * * *."

The Constitution which went into effect in 1789, provides that:

"Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The members of the Constitutional Convention who adopted this clause, must have intended it to have reference to the western territory which, at the time, belonged to the United States by virtue of the deeds of cession made by five States, and to the additional territory which would belong to the United States when two other States, North Carolina and Georgia, made deeds of cession as they had already agreed.

It would seem proper that in determining for the present period what are the conditions of ownership of property by the United States, there should be considered not only the clause of the Constitution quoted above, but that with it there should be considered the conditions expressed in the deeds of cessions of territory to the United States by the original States, the declaration of the purposes of the cessions expressed in the Resolutions and Acts of Congress having reference to the deeds of cessions, and particularly the recognized incidents of ownership of property in the original States during the

period in which the deeds of cession were made and the Constitution of the United States adopted.

It seems a very significant fact, considered in this connection, that not one of the original thirteen States ceded to the United States either soil or jurisdiction of any of the unoccupied former crown lands within its recognized undisputed territorial limits. It is thus impossible that the formation of the Federal Union and of the United States, should have effected any alteration or change in the recognized incidents of ownership of property, which were in existence in the original thirteen States at the time of their ratification of the Constitution. Nor did the raification of the Constitution pass from the States any proprietary estate in land or other property to the United States, nor did it pass to the United States any of the States jurisdiction of territory. All that the ratification passed from the States to the United States was the limited jurisdiction over their respective navigable waters which has been described above.

Quite obviously then, all the territory or other property belonging to the United States at the time of the ratification of the Constitution was the territory and property which the United States had acquired from the States by their respective deeds of cession. Also, in this passing from the States to the United States, the proprietary ownership of the property must have taken with it into the successor jurisdiction of the United States, every recognized incident of owner ship attached to it while it was property owned by the States. Not because, in the passing of proprietary ownership of territory from any sovereignty to another, the incidents of ownership must remain unchanged, for that is not true, but because in the instance of these particular cessions, the express covenants of the deeds and the provisions of the United States Constitution, both provide that from the ceded territory, the United States was to organize and admit new States to the Federal Union which should be equal in all respects whatever to the original States.

There is another reason for the view that the clause of the Constitution quoted above refers only to the proprietary ownership of property by the United States and not to the jurisdiction of the territory of the property. There are no words in it which suggest the idea of jurisdiction, whereas, in Section 8 of Article One of the Con stitution, provision for an exclusive sovereign jurisdiction of particular territory to be ceded by States is expressly made. The clause referred to is as follows:

"Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles

square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States."

The omission from the first quoted clause of such a declaration of sovereign jurisdiction over property belonging to the United States, where the property consisted of very much greater territorial cessions of the States, appears to have been intentional. There could have appeared no reason to the Constitutional Convention why it was necesarry to expressly provide for a municipal sovereignty and jurisdiction which, by virtue of the Constitution and the covenants of the deeds of cession, could only be temporary.

Nevertheless, it is now contended by a very large number of our people, that the Federal Government is empowered by that particular provision of the Constitution, to hold what de facto amounts to a permanent municipal jurisdiction over its proprietary land in the later admitted States. The basis of the contention is not that such a jurisdiction is expressly conferred by the clause providing for the disposal of property of the United States. As definitely as its proponents have stated their idea, their contention seems to be based on what they term, without defining, the inherent powers of the Federal Government.

Out of this rather cloudy idea of the particular powers of our Constitutional Government, the question seems to resolve itself down to a form something like this. Does the United States, by virtue of the jurisdiction ceded by a State of the United States, have power to add to or substract from the measure of the proprietary ownership of the soil ceded to it for disposal, and to dispose of the increased or lessened measure of soil proprietorship in another State, to which, by act of admission, it has passed the jurisdiction?

Not considering the proposition of the United States adding anything to the measure of its proprietary ownership of soil, does the United States have power, by virtue of the cession of territorial jurisdiction to it by a State also ceding the title to the soil, to substract from the measure of the proprietary ownership which was passed to it, and to thereupon dispose of the lessened measure of proprietary ownership under the jurisdiction of another State which it has admitted?

Consider the particular case of Pennsylvania. New York and Connecticut ceded to the United States the soil and jurisdiction of the territory claimed by both, which lies next west from the western boundary of New York, north of the original boundary of Pennsylvania and south of Lake Erie. This tract, 315.91 square miles in ex-

tent, was sold by the United States to the State of Pennsylvania, March 3, 1792, for the sum of $151,640.25, President Washington issuing United States patent to the State of Pennsylvania for the land, and, it is assumed, Congress by some appropriate act ceding the jurisdiction of the United States to the State of Pennsylvania. Now, in this case, could the United States, during the period of its jurisdiction and proprietorship of the soil, have substracted from the full measure of the proprietorship which passed to it, one of the incidents or of the appurtenances, and then have sold to the State of Pennsylvania the diminished measure of proprietorship of the soil?

A high authority has said:

"The opinion is held that the transfer of sovereignty from the Federal Government to the Territorial Governments as they became States included the water power in the rivers, except so far as that owned by the riparian proprietors. * * * Under these conditions, if the Government owns the adjacent land * * * indeed, if the Government is the riparian owner * * * it may control the use of the water-power * * * * *."

The meaning which it seems must be attached to these declarations is that the high authority making them holds, that to the proprietary ownership or control of land along a stream, there is attached as an incident of the proprietary ownership, the control of the use of the water power of the stream, and that from the full proprietary ownership including this particular incident, the United States may substract and hold the incident, the control of use of the water-powers, and simply dispose of the diminished proprietorship of the soil. Further, the declarations suggest that the high authority holds that proprietary ownership of the control of the use of the water-power of the streams is itself a jurisdiction. What other meaning can be given to the exception, so distinctly made, of water power owned by riparian proprietors, from the transfer of sovereignty which the United States makes to the States as they are admitted?

The administration acts of the present Federal Government, made pursuant to that provision of the Constitution relating to the disposal of property belonging to the United States, or claimed to be so made, are to all appearances consistent with the meaning given to the declarations of the high authority. The Federal Government is holding the control of the use of water power of the streams, first, by declaring the water power to be attached as an incident to the proprietary ownership of soil (public land) bordering the streams; second, by subtracting it from the soil proprietorship of which it makes disposal; and third, by claiming the water power it

has subtracted from the proprietorship of the soil to be a jurisdiction. The quantity of land which the Federal Government withdraws from disposal to color its claims of reservation of proprietorship by including the streams within a border of land, is immaterial. It could as well be for its purpose the width of a thread margining the streams as the width of a mile margining them. What other meaning can the repudiation by the Federal Government of the eminent domain of the State over the water power withdrawn and held by the United States, have, than the meaning that the Federal Government maintains that its own proprietary holding o the water power is a jurisdiction?

If what the high authority now holds may constitutionally have attached to it the meaning which is explained here, it would certainly seem that it would have had the same meaning if it had been held by the same high authority when Pennsylvania purchased land from the United States in 1791. Assume that it had been then held by the same high authority, and that the Federal Government had in fact subtracted the water power of the streams from the complete proprietary estate it had received by cession of the States, and only passed proprietary title to the remainder of the estate along with the jurisdiction, claiming, nevertheless, that its reservation of the water powers was an independent jurisdiction with which the territorial jurisdiction ceded could not interfere, would Pennsylvania have accepted the cession with its trimmings? Would Pennsylvania have consented to a proposition which would result in there being two grades of proprietary ownership within her jurisdiction—the full proprietary ownership passeed with her own grants as the original sovereign, and the limited proprietary ownership which she would have received from the United States? Would the members of the Constitutional Convention, the members of the Federal Congress before the Constitution was, the Governors and members of the Legislatures of the original States between 1776 and 1789, would all of these persons who formulated the Constitution have accepted such a proposition from the Federal Government in the light of their well expressed intention to limit the jurisdiction of the United States over the proprietary ownership of property belonging to it, so that it should be merely temporary, simply to facilitate the passing on of the full jurisdiction to new States which would be admitted, a function which the States could and did accomplish without vesting either jurisdiction or proprietary ownership in the United States or charging the Federal Government with anything but the performance of the forms of admission of new States—new States which should be equal in all respects whatever to the original States

Following the line of parallel comparison, suppose that the Federal Government had reserved from its disposal of the soil of Ohio the water powers of her streams, would the State of Ohio after her admission by Congress in 1802, have been the equal in every respect of the State of Kentucky, across the Ohio River from her, in which the full proprietary ownership of the soil had passed direct from the State of Virginia without a similar reservation to that assumed to be made by the United States in the territory of Ohio?

It is very difficult to see how, in the early years of our Federal Government, acceptance could have been had of the present Federal Government doctrine relating to its proprietary ownership of property. People, removing from the jurisdiction of one of the original States to a newly admitted State to better their condition, would be very unlikely to believe that they were bettering it by accepting the proprietorship of land less than they possessed under the jurisdiction which they had left. They would not have been likely to have accepted it either as a Constitutional exercise of power of the Federal Government to retain property as a jurisdiction which had been ceded in an express trust to be disposed of as received.

Suggesting, as the high authority has suggested, that the Federal Government has power under the provision of the Constitution granting it power to dispose of property belonging to the United States, to reserve from the disposal the water power of the streams and to hold them as a jurisdiction independent of the eminent domain of the State having the sovereignty of the territory containing the streams, the suggestion seems negatived beyond question by the existence of the Constitutional provision, the fundamental basis of the Federal Government itself, that the powers of the Federal Government within the jurisdictions of the several States are the same regardless of whether the States are of the original thirteen or admitted since. It is very obvious, that the Federal Government could never have had in the original thirteen States, or in four admitted States—Kentucky, Vermont, Maine and Texas—the jurisdiction over the water powers of the streams now exercised de facto in several of the later admitted States.

It is difficult to see how the territory ceded to the United States by the original thirteen States could be admited in any different respect as regards the proprietary ownership of the soil than the status in the original States making the cessions. The sovereignty was never absolute, being limited by the trusts created by the covenants of the deeds of cession. The Constitution itself in the difference of the two provisions dealing with territory ceded and to be

ceded by the States to the United States suggests that this was the intention of the framers of the Constitution as to the meaning which should be attached to the two provisions. Congress, the Federal Government then, faithfully fulfilled the trusts of the covenants of the deeds of cession of the States, so that there never was an issue which required a ruling by the Courts.

Later acquisitions of territory by the United States have all been national property and the jurisdiction of the United States has been complete except as limited by the Constitution in its provision for the admission of new States, that they shall be equal in all respects whatever to the original States. It would seem as if the nature of the proprietary ownership of the soil by the United States must, wherever there was the intention to admit new States, be the same measure of proprietary ownership and no more than that vested in the Federal Government by the deeds of cession of the original States to their own territory made to the United States for the express purpose of forming and admitting new States. The nature of this ownership was solely proprietary and not sovereign because it is evident that the conditions of the deeds of cession precluded complete sovereignty.

Life and Character of Edward Whitson, Late United States District Judge For The Eastern District of Washington

W. T. DOVELL, OF SEATTLE

MR. PRESIDENT AND MEMBERS OF THE ASSOCIATION:

One is warranted in saying that in the present generation the place a man is allotted in popular favor, if indeed, he be given a place at all, depends first upon his opportunity, and it is not to be denied that today, more than ever in the history of the Republic, opportunity so far as it relates to men in public life is fortuitous.

To be a patriot, to possess a mentality strong and well governed, with integrity and fortitude of intellect was one day commonly sufficien to crowd the possessor past the common rank into a place amongst those who are called the leaders of men; all opportunity necessary for the acquisition of fame would like enough be generated by the very presence of these qualities. But now it may well be thought that fame is most often accidental and popular favor and applause is accorded most often to the man whose highest claim consists in the fact that he has chanced to stand in the path of opportunity. If superficiality be, as we may well believe it is, the order of this generation, it is not to be wondered at if men of meagre attainment often reach a place which is denied to those of more abundant desert.

It is not to be said by way of complaint at an existing condition, but it is merely to remark that there may be about us any day men whose intrinsic merit would entitle them to a seat amongst the mighty, yet they may live and die, and we who know them best have an insufficient comprehension of their real or comparative worth. I say this because I feel that the man of whom I speak was one entitled to a rank amongst the highest, and I shall deny that my estimate is bred or shaped at all of the deep affection which I bore him. If his early life was in obscurity, it was because his path was in the wilderness where fame could hardly search him out. He could not have renown as a leader of his State until he had first helped to build that State; and this was the task of his earlier days. If, as years went on, he did not emerge at once from that obscurity, it was because he was delayed in tedious struggle with an adversity which had

quickly made a weaker man to yield. If, after he had entered public life, he did not by general verdict rank as one of the great jurists of the nation, it was not that he lacked in the deserving, but because the Reaper cut him down before he came into his own, and the acclaim which could not have been denied him was smothered at his grave.

Edward Whitson was born in Linn County, Oregon, in October, 1852. But a few years before the first straggling bands of pioneers had broken through the gorges of the Rocky Mountains and were then beginning to scatter themselves along that valley where

"Willamette's green mosaics lead
Westward to ocean's misty strand."

His parents were of that band which a primal wanderlust had inspired to plant the seeds of civilization in a hinterland which was then hazily known and designated as the Oregon Territory. Here Nature, though ample and responsive, lavished nothing save upon him whose endeavor claimed it. Her generosity, though never denied, was always reserved as the reward of toil, of fearlessness and self-reliance. No sickly hearted race of men could make this wilderness to yield and blossom, but vigor, intrepidity and toil were the price of an existence. Here Whitson learned with his earliest breath that the tasks which life had set for him were not to be accomplished save by his own stern exertion, and so deeply did the lesson sink, and so entirely did it become his rule that at the end of his career it could be truly said that all he had and all he did and all he was had been wrought by the labor of his own hand and brain.

What little early scholastic training he received was had at a small Christian college at Monmouth in Polk County, one of those little institutions of the higher learning which the Oregon pioneer set up almost as soon as he had hewn for himself a habitation in the wilderness. Crude indeed were those schools our fathers founded, and meagre enough the opportunities they provided. Perhaps the highest benefit they conferred was to implant a yearning for broader knowledge and a higher culture, but even in their crudeness and their poverty they betray the noble aspirations of an heroic race of men.

In 1869 Whitson came with his father's family to Puget Sound, where for a time he found employment in a lumber mill. A year later an opportunity came to him to handle some sheep and cattle, and for this purpose he crossed the mountains into the valley of the Kittitas. At that day there were perhaps not a dozen white people in that entire valley. Conditions were wholly primitive, and a livelihood was not to be had except by undergoing all the relentless hardships of the pioneer. A loghouse was the shelter and the limitless

hills the domain of him who chose to occupy. He ground his own flour; in the summer grazed his stock upon the hills, and cut the grass from the river bottom for his winter feed. The County of Yakima included the valley of the Kittitas and of the Yakima; it stretched as far south as the Columbia and was 200 miles across. The few settlers were widely scattered, and each man must depend upon his own endeavor so that he achieved nothing save as he gained it by the labor of his hands. In such a pitiless school Whitson learned the all essential lesson of self dependence. He mastered his reluctant surroundings and prospered fairly in the land, so that at twenty-two he was a man of some property and had secured the confidence of those who were about him. Always he strove for mental development and as he lingered on the sage brush hills to herd his flocks, he read his books, and, reading, comprehended them, and comprehending them, there grew in his soul a longing for a career which would permit a broader scope for his intellectual faculties.

In 1874 he was elected auditor of Yakima County, an office which he held for one term. The duties of this office made so little demand upon his time that he was able to devote much of it to the study of law. At the expiration of his term as auditor, he was elected to the Territorial Legislature. The names of most of those who sat with him in that body are but a memory to the present generation, yet they fairly represented that body of pioneers then engaged in the tedious task of building a commonwealth. Amongst those who sat with him was Cornelius H. Hanford, the well known Federal Judge of the Western District.

It was one of the observations Whitson was accustomed to make with a show of seriousness that in his opinion the work performed by the Territorial Legislature was of a much higher order than anything that has since been accomplished by our State Legislature. He said that the great ambition of each member of the Territorial body was to secure a small appropriation for some local purpose, such for instance as the building of a wagon road in his county. The member's attention being thus engaged, he was not so apt to conceive the necessity of laws of a general character, and thus the commonwealth was less law beset and less afflicted than at the present day. Here one cannot refrain from remarking that in those days a different method was followed in selecting the members of the legislature. If memory serves properly, there was in those days thought to be something of an impropriety in seeking a seat in that body. In a farming community the most substantial farmer was apt to be selected; in the town the most successful merchant or the lawyer of most prominence or promise might be tendered the nomination. The body thus

selected was generally representative and was, therefore, little apt to surprise the people by any vagaries of enactment.

At the close of the Legislative session, Whitson removed temporarily to Albany, Oregon, to pursue further the study of the law. He returned to Olympia and was there admitted to the bar in 1878, when he at once took up the practice of his newly acquired profession at Yakima City. Early in the 80's this town, to satisfy a whim of the railroad company, was removed bodily to the present site of North Yakima. Whitson followed, and there resided until his appointment as Federal Judge in 1905. In 1885 he was was married to Nellie Bateman, who, with two daughters, survives him.

It is perhaps fair to say that no other man was so closely identified with all that pertained to the development of the Yakima Valley. He was of the first to conceive its possibilities, and he believed in its future to the point of fanaticism. Where others saw the rolling wastes and dusty gorges of the Moxee and Athanum, he pictured a landscape of beauty and fertility. True, Nature had ungenerously denied an element for the lack of which the then barren land declined to blossom, but he had faith that some of the manifold schemes to provide water would come to a successful fruition. With this hope abiding in him he labored incessantly for the development of his county. All that he was able to earn, and indeed all that he could borrow, he was willing to chance upon the issue that his dream of future development would have a realization in fact. In the end, he profited to a comfortable degree from the realization of his hope, but for many years he endured a wearying struggle with poverty. He told me once that he believed he had been entitled to the distinction of being the most prominent man in the valley, inasmuch as he was the most thoroughly insolvent individual in a community then noted chiefly for its impecuniosity. Those of us who can recall the apparent hopelessness of this period, when a general depression arrested the material progress of a State which had not proceeded far enough in its development to have any accumulation of wealth, can understand the discouragement of it all. He fell into rhyme, as he was sometimes wont to do, and described conditions as they then existed in this wise:

"Same old country, sage brush hue,
Same old schemes and schemers too;
Same old railroad yet to be,
Same old fortunes none will see;
Same old people—nothing new."

During the period of his residence at North Yakima, he occupied many positions of trust. He was for years the President of the First

National Bank and for several terms the Mayor of that City. In 1904 he was chosen President of this Association. He was unfaltering in his party allegiance and active and prominent in its councils. He was a delegate to the National Convention which nominated President Harrison, and always a familiar figure in State Conventions. Had he desired, he might have had the Republican nomination for Governor in 1904. Upon the creation of the Eastern District of Washington, with practically the unanimous accord of the Bar of the State, he was appointed by President Roosevelt to the Federal Judgeship, a position he had always coveted and of which it is only fair to say he was to the day of his death exactly jealous and intensely proud. He came to this position not only abundantly equipped with a true and thorough conception of legal principles, but with a comprehensive practicality which forbade the accomplishment of a wrong in any guise of law. If ever a man doubted his integrity—and such a one I never knew—it seems to me a look into his face would have banished such a thought, for no God will ever sit upon a judgment seat with countenance more fair.

He was well endowed with patience—after all perhaps the highest quality which can grace a judge. He felt himself at all times able to profit by suggestions of the advocate. He never had the thought which too often seems to possess the mind of the judge of a narrower calibre, that the advocate might by his effort or his art divert him from a right conclusion, but he looked upon the advocate as his intellectual ally and he esteemed his argument as an effort to direct him toward a true conception of the proposition before him. He had a faith in the integrity, and confidence in the ability of the bar of this State, which he often privately expressed.

In the preparation of his written opinions he exercised the greatest care. I have heard him say that he believed that a judge was singularly derelict who permitted an opinion to be published, where it would stand for all time as a monument of the law, until he had given every word it contained the most mature consideration. By this endeavor, he acquired a chastity of style and purity of expression which adorns his published opinions, and a reading of them will convince that he, at least, was one of the judges who never, by any inaptitude of expression, muddied the waters of the juridical stream.

Judge Whitson was of the world and of the people, and the impulse of humanity was strong in him. He had fought his own battle with adverse conditions, and while it had bred no bitterness in his soul nor disturbed the equality of his mind, it had taught him a comprehensive democracy, and had enabled him to learn with thoroughness the greatest concept of our law—that the most sacred monument

of our system is the right of the individual man. Society may or ganize, and a complexity of conditions make that society interminable in its parts. Slowly the privileges of the man—yes, the liberty of the man gives way as the structure encroaches, and enlarges to accommodate what is believed to be the new requirements of this great society. But let us never doubt that however grand that structure, or with whatever magnificence it be designed, it will with a relentless certainty fall and crumble to the earth unless it have for its very keystone the right of the individual. He demonstrated his conception in this regard in the Hanson case (U. S. v. Hanson, 167 Fed. 893). In this case a settler had builded his home upon an unoccupied portion of the public domain, seeking to acquire it when it should be open to acquisition under the homestead law. After many years an executive order was passed setting aside this land as a part of a reclamation project. Judge Whitson denied the power of the Government ruthlessly and without compensation to disregard the rights of the settler, saying in the course of his opinion:

"The statement of what is proposed, if the allegations of the answer be true, at once challenges attention and invites the most careful scrutiny. If the plaintiff should prevail, the defendant's improvements would be taken without compensation; his possessory right would be confiscated; his hopes of ultimately acquiring the title would be destroyed; and he would be compelled to bid farewell to a home which he had occupied for 17 years, relinquishing the land over which he has exercised dominion by virtue of a statute of the United States, and in full compliance with its provisions, while standing impotently by to see it devoted to other uses, a result which at the time of his settlement he had no reasonable ground to anticipate. Considering that the Court is asked to become an instrument of injustice, it is to be remarked that it will only do so in obedience to rules of statutory construction demanding an interpretation of existing statutes favorable to such an end, for surely the proceeding has neither necessity nor merit for its justification, as I shall presently show. * * *

"It would be a poor requital to the defendant, for the wasted days of labor and the weary years of effort, to be assured that the homestead law is one of great beneficence, even though he might not be able to see the justice of appropriating his property for the benefit of others no more meritorious than himself."

And again he says in Morris v. Bean, 146 Fed. 423:

"but equity does not consist in taking the property of a few for the benefit of the many even though the general average of benefits would be greater."

In the Tully case (U. S. v. Tully, 140 Fed. 899) it was contended that certain premises in Montana had been established as a military reservation, the ground for such contention being an order of the War Department issued without express warrant of statute. The defendant had been indicted for murder committed upon these premises, and the objection was to the jurisdiction of the national government. He said:

"The fact that the defendant is to be discharged may furnish a text for the thoughtless or uninformed to say that a murderer has been turned loose upon a technicality; but this is not a technicality. It goes to the very right to sit in judgment. To retain this case would be to create jurisdiction by judicial dictum; to enact a law, not to administer it; usurpation of legislative power rather than a construction of the legislative will. It can be said to the honor of the courts that they have steadfastly adhered to the purposes of their creation and establishment and that they instinctively shrink from exercising powers not conferred by the Constitution and laws."

It is not to be denied and it is a fact which in these days is taking on a singular importance that the man born in this Western land and reared under the influence of Western institutions acquires a disposition and tendency of thought different from that of the man whose environment is a society more compact and a Nature less dominant. The men of the West set themselves to a great task, which was the price of their survival—to conquer Nature and erect an empire. In the performance of this task they have had in their hearts the thought that when they builded an empire they should possess it as their own. Nor can we deny that such an impulse is instinctive in the human breast. Such a race of men does not submit with complacency to any rule which denies to them the fruits of their energy and adventure. It is only when enervation has made a race supine that it will so submit. To any law we yield a quick enough obedience, but it must be a law enacted by an authority properly constituted. We are still elemental enough to deny the right to make our laws to any authority save the one—the representatives of the people. Our people have not yet sufficiently degenerated that they yield with ease to an abridgement of individual liberty—that liberty which our fathers have taught us to believe is ours; liberty defined only by the law, and the law defined only by those whom we have thereunto accredited.

Such was the temper of Judge Whitson, and he observed with no small concern the tendency of our Government toward bureaucracy, a tendency which he believed to be a menace to our institutions. This disposition gave color to some of his decisions, and if ever he went too far on this particular question it was because he dreaded the in-

sidious encroachment of what he judged to be a most dangerous doctrine.

In the Mathews case (U. S. v. Mathews, 146 Fed. 306) he refused to give effect to a regulation of the department which made an invasion of a forest reserve a crime. He says:

"The rules and regulations may only be prescribed for carrying out what Congress has expressly declared to be the law. Such powers do not pertain to the legislative functions, but are referable to administrative duties. Congress cannot leave a statute to be enlarged upon either by the Courts or the executive department. It cannot authorize any other branch of the Government to define that which is purely legislative, and that is purely legislative which defines rights, permits things to be done, or prohibits the doing thereof."

In the case of U. S. v. Wells (163 Fed. 313) he demonstrated the vigilance with which he believed it was his duty to guard the rights of the individual against autocratic assault. The case itself is an ugly instance of the prostitution of governmental authority. It appears the Department of Justice desired that indictments be secured against certain citizens of Idaho. That the instructions of the Department were mandatory and presupposed the guilt of these citizens cannot be doubted from the zeal betrayed by its officers. The attorney for the government invaded the grand jury room, and an indictment was returned in obedience to his demand. This indictment was quashed by Judge Whitson, sitting in the Idaho District. His opinion contains a clear exposition of the history and proper function of the grand jury, in the course of which he says:

"but upon the proofs here it is manifest that to sustain the indictment would be to establish a precedent to which political partisanship, religious intolerance or anti-religious intolerance—for the latter is quite as apt to exist as the former—could point as a justification for upholding the return of an indictment through popular demand, public excitement, persecution, or personal ill will. We will do well to adhere to old landmarks and established principles which are quite sufficient for bringing to trial all who are guilty of an infraction of the laws of the land."

But we are not to conclude that he stood for any abridgement of the powers of the national government when rightly exercised. He was a firm adherent of that school which inclines toward a broad interpretation of the Federal Constitution. In the Zikos case (Zikos v. O. R. & N. Co., 179 Fed. 893) he upheld the constitutionality of the National Employers Liability Act. Speaking of that portion of the

act which establishes rules of liability and imposes upon the state courts the duty of enforcing them, he says:

"It would be an anomoly in our system if state tribunals after having so long entertained the grievances of litigants where rights are traceable to congressional legislation should refuse to further do so because of the fact that there has been provided by a power clearly competent different rules of liability for those engaged in interstate commerce from those which may be fixed by statute or recognized by decisions in the several states. All government rests upon acquiescence in the established order. When common consent is withdrawn, prescribed rules of conduct are overthrown and anarchy reigns. And it is not to be supposed that state courts will or can refuse to abide by the result when the Supreme Court, the final arbiter, has decided they have jurisdiction. If that should occur the Constitution would cease to be the Supreme law of the land and its express provision that 'the judges in every state shall be bound thereby anything in the Constitution or laws of any state to the contrary notwithstanding' would become null and its application inoperative."

Schooled as he was, it would indeed have been strange had he inclined toward a limitation of the scope of the Federal Constitution. He had an ample appreciation of changed conditions which the national government is required to meet and the ever enlarging functions it must perform, and he thoroughly believed that if the national government were to have viability at all, it must retain it under an instrument broad enough to comprehend all conditions which should be generated by progress and by time. But he saw a clear distinction between such a legitimate application of the constitution and a violation thereof, and thus he realized what some of our modern political theorists appear unable to comprehend—a clear distinction between nationalism and autocracy.

He was a thoughtful man—a profoundly thoughtful man. By birth, by training and by inclination he was democratic. At no time in his career did he subscribe to any alliance with those men whose political opinion is shaped by their commercialism. His association or environment had never been such as to prejudice his judgment. It is fair to say that his intellect and investigation was such as to keep him properly poised between radicalism and conservatism. Therefore, as we may esteem an expression of his views to be of value, I take the liberty of telling you what he wrote to me in a letter of April of last year. He said:

"I am trying to collect data for the writing of a book some of

these days, entitled, 'The Subversion of the Constitution.' I will give you some of the chapters.

"Chapter I.—A Retrospect. This will contain a brief reference to historical events where personal rights have been overriden and where those things have happened which the provisions of the Constitution in that regard were intended to prevent. It ought to be written in the most striking manner, which I may never hope to do.

"Chapter II.—Constitutional Guarantees, including a discussion of the constitutional convention and the reason for their adoption. This would necessarily include defining the powers of the three co-ordinate branches of the government.

"Chapter III.—The History of the Constitution, and the decisions of the Supreme Court, such as the Ju Toy case, which denied the right of one claiming to be a native-born citizen to appeal to the courts by habeas corpus, thereby entitling him to a hearing as to whether he was entitled to enter his native country, and many more decisions showing the gradual trend toward executive power.

"Chapter IV.—Will Congress Finally Abdicate? This chapter will discuss many acts of Congress which have delegated to the Departments the right to make rules and regulations, some of which acts have expressly provided that the violation of such rules and regulations shall constitute a criminal offense. (It is not a criminal offense in this district yet.) The Supreme Court, however, recently stood equally divided upon the question.

"Chapter V.—The Growth of Bureaucracy. This would compare, among other things, the condition of the colonies with the present condition as being domniated over by a lot of special agents.

"Chapter VI.—A discussion of the causes which have led to these subversions—the sensational press—popular clamor—the want of a thorough knowledge of the fundamentals of our government and incidentally it might embrace a brief reference to the failure of pure democracy and assign the reasons."

At another time he wrote me:

"It is true we have vast accumulations of wealth brought about in large part by privilege, but the world will never see the day when men will be equal in the ability to acquire wealth, any more than they will be upon the same plane mentally or morally. Sancho Panza observed this when he was governor of the island, when he remarked upon the ever present contest between the haves and the have nots. * * *

"Now I know," he wrote, "that the owners of predatory wealth, as it is rightly called, have been perfectly regardless of consequences. I know that they live in an atmosphere where they cannot understand or appreciate the danger to property rights generally which is everywhere impending. No doubt it is a truism to say that they do not care. But as against these reckless adventurers and financial bandits, we have the great conservative element of the community which has been proceeding as fast as the complicated situation would permit to so regulate affairs that a man would have the right to own property, but at the same time be denied the right to use it to the disadvantage of the community at large by the exercise of privileges not generally available."

In the last message I had from him, but a few days before his death, he remarked again the tendency to depart from those principles upon which the nation was founded, and upon which alone, he believed, it could survive. He closed his comment with this expression:

"Occupying a place where opportunity affords to abide by and uphold the things established by the fathers, I am going to contribute my mite to staying the tide, upholding the laws by preserving the constitution, as I am sworn to do."

And so, when I deplore his taking off, it is not so much at that affliction which broke our fair companionship and robbed me of my friend, but because the nation in this trying hour has lost a stout defender. Comprehensive wisdom and unfaltering courage are qualities still rare enough amongst the servants of this republic to require that we should deeply feel the loss of one who possessed those qualities in such a high degree. Observe a government erected upon the highest ideals, nurtured in its infancy by the purest patriotism and builded by high statesmanship into what we have fondly believed to be the grandest institution in the history of civilization, and it imperilled now when it should be at the very height of its security and strength. An unconscionable and greedy wealth has been permitted to plunder and corrupt, while commercialism enshrouded patriotism: a sudden awakening of the people and their inconsiderate rush toward an extreme which threatens our very institutions—a determined disposition to trample upon established principles and subvert the entire scheme of government in a frenzy, to right these wrongs which any day might be corrected by the application of long appointed rules, and which will inevitably give way to greater evils as these rules are departed from; men of real pith and puissance, too often lacking, to guide our affairs. Those who realize that republican government is yet but an experiment on the earth, and that it has not yet been

demonstrated that tyranny and misrule are not possible under such a form of government as ours may well be apprehensive of the future. At such an hour as this we can ill afford to lose a man of the breed of him of whom I speak—a man who had the wisdom to see the truth and the courage all undeterred to do the right as he observed it.

One who knew him not so well, one who loved him less than I, might picture his character with a firmer brush. He was a simple man, and out of the simplest elemental things he gathered his aspirations and his joys. His virtues were those of the natural unspoiled man and his faults were the same. He was at constant war with pretense and with sham; dishonesty in action, word or thought he never understood, and likewise never could forgive. An exuberant sympathy, an almost boyish whimsicality, a sense of humor which most often demonstrated itself in quaint exaggeration, were characteristics which tied him close to those who knew him well. High purpose, inexorable honesty, and withal a broad benevolence, sat upon his brow and showed in every feature of his face. Serene and buoyant always, he loved this world and all that was therein. As the true child of nature, the sun shone and the rains of heaven fell—all for his delight, and every shrub that grew and every flower that blossomed was reserved for his emotion; and as Nature never does betray, she nurtured him and gave him much of strength and those fair qualities of heart and mind which make a man beloved of his fellow men.

All that he was he achieved with no aid save that which his merit was sufficient to command. His whole existence was devoted to self-improvement. The task of his lifetime was to enlarge and strengthen those faculties with which he was endowed, so that his life was one of constant growth as he took unto himself a nobler culture and a deeper wisdom. Nor shall we believe that such a course of preparation, of unremitting growth, of constantly expanding worth and usefulness is checked forever by a disembodiment of faculties thus under God attained. Rather have faith enough to trust that the genius of the universe has laid out a better order for humanity, so that the might and power which man hath wrought even out of his primal nothingness shall not perish altogether in the whirling of the spheres.

"Nor blame I Death, because he bare
The use of virtue out of Earth;
I know transplanted human worth
Will bloom to profit otherwhere.

For this alone on Death I wreak
The wrath that garners in my heart;
He put our lives so far apart
We cannot hear each other speak."

In Memoriam

REPORT OF COMMITTEES ON OBITUARIES

Hon. Clinton W. Howard,

President of the Washington State Bar Association:

Dear Sir:

Your Committee on Obituaries begs leave to report that since the adjournment of our Association at Bellingham last year, it finds that the following named members of the Bench and Bar of Washington have passed away:

JUDGE EDWARD W. TAYLOR.

On August 12, 1910, Edward W. Taylor, Superior Judge of Okanogan County, died. He was born at Ottawa, Illinois, October 28th, 1854. He moved with his parents to California in 1858. The parents were unable to give him the educational advantages which so bright a boy should have had; but, by his own energy and ambition, he succeeded in earning his way into and being graduated from the Santa Rosa College. In 1882 he was admitted to practice law in Nevada. Two years later he came to the Territory of Washington. From 1884 until 1906 he practiced law in Tacoma. In the latter year he was elected to and served a term in the State Senate. A year or two later he exhibited symptoms of locomotor-ataxia and soon became partially paralyzed. Undeterred by this misfortune, and with his body in a really pitable condition, he continued manfully at his practice and in the support of his family. In 1906 he removed to Loomis in Okanogan County; and three years afterwards his family moved there also. He was not long at Loomis before he was elected Judge of the Superior Court for that and the other counties in the judicial district. He served in this capacity until his death. His body was brought to Tacoma and cremated.

Judge Taylor was a bright lawyer and an indefatigable worker. He was well liked by everybody in Tacoma, and his popularity followed him to Okanogan County and remained with him.

JUDGE EDWARD WHITSON.

In October, 1910, Hon. Edward Whitson, United States District Judge for the Eastern District of Washington, passed away. He was born in Linn County, Oregon, October 6th, 1852, and was therefore just fifty-eight years of age at the time of his death. His edcuation culminated at a small college at Monmouth, Oregon. In 1869 he removed with his parents to Puget Sound. In 1870 he crossed the Cascade Mountains and settled in that part of Eastern Washington now embraced in Kittitas County, where he engaged in raising sheep and cattle. In 1874, at the age of twenty-two, he was elected County Auditor of Yakima County. In 1876 he was elected to the House of Representatives of the Legislative Assembly of Washington Territory and served one term. He was admitted to the Bar at Olympia in 1878, and took up the practice of law at Yakima City, whence he removed to North Yakima when the latter town was started as a substitute for the former. In North Yakima he served several trms as Mayor, and was President of the First National Bank for many years. He was a delegate to the Republican National Convention which nominated Benjamin Harrison for the presidentcy. In 1904-5 he served as President of this Association.

In 1885 Judge Whitson married Nellie Bateman, who bore him two daughters, Marian Whitson and Mrs. Earle B. Crane, of Spokane. The three survive him. In 1905 he was appointed as United States District Judge for Eastern Washington.

Mr. W. T. Dovell, of the Seattle Bar, has prepared an elaborate and scholarly sketch of the life and character of Judge Whitson for delivery to you at this meeting, and as any attempt to improve upon any production of Mr. Dovell's would be like painting the lily, I shall leave to him the entire subject beyond the meager data here presented. data here presentd.

JUDGE ERNEST PECK.

The successor of Judge Edward W. Taylor on the Okanogan Bench was Ernest Peck, who died of pneumonia at the Sacred Heart Hospital in Spokane on Saturday, December 3, 1910, after an illness of about thirty-six hours. He was born in Port Chester, New York, August 16, 1874, and was therefore but a little over thirty six years of age. He was graduated from the New York Law School in 1897. He studied law for four years in the office of his brother, Jerome

Peck. He came to Seattle in 1898 and was admitted to the Washington Bar. After spending a year in Seattle and Skagway, Alaska, he moved to Wenatchee, and thence to Chesaw in 1899. He was married on December 25, 1902, to Miss Stella Smalley, eldest daughter of Hon. and Mrs. M. A. Smalley of Chesaw. Their daughter Helen, now in her seventh year, is the sole fruit of the marriage. In 1906 the family moved to Oroville, where he opened a law office. There he resided until his appointment to the Superior Bench in August, 1910.

Judge Peck went through the usual trials of a young attorney starting in a new country; but his genial disposition and fine character soon gathered around him a band of warm friends, and he prospered rapidly. His death was greatly mourned in Okanogan and Ferry Counties.

WALTER LOVEDAY.

At the early age of forty-five, in the city of Tacoma, on February 25, 1911, Walter Loveday died of heart trouble. He was born in England and studied law in London, whence he came to this country and settled in San Diego, California, where he practiced law for two years. He then removed to Tacoma and entered the legal service of the Northern Pacific Railway Company, which he left to join the firm of Pritchard, Stevens & Grosscup. Later he made one of the firm of Loveday, Kelley & McMillan. In social life and at the Bar, Mr. Loveday was highly esteemed. He was reliable, honest, upright and unassuming; and his death was greatly mourned in Tacoma.

VESTAL SNYDER.

At North Yakima, on March 7, 1911, Vestal Snyder died of cirrhosis of the liver after an illness of several weeks. He had been in precarious health for some time and but slight expectation of his eventual recovery was entertained. He was born December 27, 1867, at New Orleans, La. He was married on Thanksgiving Day, 1901, to Nona Marquis, at Danville, Illinois. She and two daughters, Helen and Marion, survive him. He was a graduate of the Law Course at Valparaiso, Indiana. He removed to North Yakima in 1894, after

having spent a short time at Spokane and Cheney. He was for a long time in law-partnership with Judge E. B. Preble, and latterly with Floyd Hatfield. He served as Prosecuting Attorney of Yakima County, and as City Attorney of North Yakima several terms. In later years he devoted a great deal of his attention to farming in the neighborhood of North Yakima. He was a popular man throughout Yakima County and had a large following of devoted friends.

ROBERT G. HUDSON.

One of my associates on this Committee this year was Robert G. Hudson, of Tacoma, who died in that city on April 16th, last, in the sixty second year of his age. He was the son of a distinguished lawyer of Mississippi, Robert S. Hudson. He was graduated from the University of Mississippi, admitted to the Bar, and practiced law with his father in Yazoo City. In that State he formed a law-partnership with R. S. Holt, with whom he continued to be associated to the moment of his death. He followed Mr. Holt from Yazoo City to Tacoma in 1891. He was prominently mentioned as good timber for a Federal Judgeship in this State two years ago and had strong support for the appointment. He is survived by two sons and one daughter. Mr. Hudson was one of the best known attorneys in Western Washington and was an important figure in the business and social life of Tacoma.

JOSEPH F. EADES.

Continually mourning over the death of a beloved daughter a year previously, and suffering great depression of spirits, Joseph F. Eades hastened his own end at Seattle on April 28, 1911, leaving surviving him a wife and another daughter. He came to Seattle five years previously from Plattsburg, Missouri, where he at one time held the position of United States Marshal of the Western District of that State.

W. I. AGNEW.

At Aberdeen on May 18, 1911, W. I. Agnew, a prominent member of the Bar of Chehalis County and a good citizen, died after an operation for cancerous growth in the intestines. He had purchased a ticket for Rochester, Minnesota, to go to the famous hospital of the Mayo Brothers; but a growing weakness induced him to undergo the operation at a local hospital. He did not recover from the shock. He is survived by a wife and an only child, a daughter of fourteen years of age. He was fifty-one years old. His father, living in Olympia, is ninety years old. He was born on a farm near Toronto, Canada, and attended school at Port Sarnia, where he also taught school until 1884, when he removed to Groton, South Dakota, and entered upon the study of law. From Groton he removed to Aberdeen in the same State, and from Aberdeen, in 1890, he removed to Olympia, from which he removed to Aberdeen, Washington, six years before his death.

WILLIAM W. WYNKOOP.

At the age of twenty six, with brilliant prospects at the Bar, William W. Wynkoop died at Tacoma on May 24th last. He was born in Jamestown, N. Y., June 26, 1885. He had lived in Tacoma since 1888. His parents being a well-known and highly esteemed family, his own acquaintance being extensive, and his qualities of head and heart being highly prized, his untimely death made a painful impression upon the community.

FRANK S. SOUTHARD.

On May 30th last, Frank S. Southard, of the firm of Morris, Southard & Shipley, of Seattle, died in that city of uremic poisoning, after an illness of over two years. He was born at Raymond, Ohio, March 12, 1865, and came to Seattle in the Autumn of 1890. He was noted as an athlete and was a devotee of all manly sports. He was a graduate of Antioch College and of the Harvard Law School. He is survived by his wife and two daughters aged, respectively eighteen and sixteen. He was a man of most examplary habits and of agreeable disposition, and in all the relations of life, was highly esteemed.

SIMON PETER RICHARDSON.

One of the most popular attorneys in Western Washington was Simon Peter Richardson, of Shelton, the capitol of Mason County, where he died on the 6th of this month. He was born in Summerfield, Alabama, October 24, 1865; his father being Rev. Simon Peter Richardson, a prominent clergyman in the Methodist Episcopal Church, South. He entered upon his legal training in Yazoo City, Mississippi. He turned from the law to journalism and became for a time the editor of the "Yazoo Sentinel." He came to the State of Washington in 1896. After a few months spent in Tacoma and Chehalis, he located permanently in Shelton. He was a familiar figure in all State Conventions of the Democratic Party, but was never an applicant for any nomination for himself. The only public position which he ever held was that of Prosecuting Attorney of Mason County, to which he was appointed upon the death of the elected incumbent. He leaves a wife and five children. His brother Charles, who practiced law for several years in Tacoma, is now President of the Pacific Cold Storage Company in that city and has retired from practice. Other members of the family are still living in Mississippi and Alabama. Mr. Richardson's death was wholly unexpected, and the physicians have been unable to ascertain any cause for it. About 10:30 p. m. on the 7th instant he retired in his usual health and spirits, with his son, to a tent adjoining the family residence. A few minutes after getting into bed, his son Hal heard a cry from the father, who rose in sitting posture and fell back without further sound or movement. When Mrs. Richardson reached the tent from the home his life had departed. His wit, humor and geniality made him a great favorite everywhere, and his death was sincerely lamented over all of Western Washington.

ROBERT W. PRIGMORE.

The most tragic and sensational death of the year was that of Robert W. Prigmore, one of the Superior Judges of King County. On the 17th instant he and his intimate friend and former partner, Mr. Robert H. Evans, Deputy Prosecuting Attorney of King County, went to Whatcom County on a hunting expedition. Speaking of the unfortunate affair near the scene of the tragedy, Mr. Evans says:

"I want all the facts to be known about this terrible affair. We came here last Saturday and hired a horse, going the next day to a shingle bolt camp on Baker River, in Whatcom County. The men

there said we could get better fishing on Rainbow Creek, so we kept on the trail that led to the north of Baker Lake, in Whatcom County.

"We spent Sunday afternoon and Sunday night at the house of a ranchman and put up our horse there.

"Monday morning we left about 5 o'clock for Rainbow Creek to fish. We were told by one rancher that there were lots of bear around, and that he had seen one the day before. There is a lot of salmonberry brush along the trail, and we saw a number of bear tracks before we reached the creek.

"When we arrived there, Prigmore went over towards some green timber and I circled around, getting up close to the snow line. I came back about 1 o'clock. Bob told me that he had seen a number of bear signs over on Swift River, and we moved the camp up to Rainbow Creek. We could not do any fishing, as the creek is very swift and muddy, so we brought the camp outfit up from the ranch and camped there Monday night.

"Before retiring, Prigmore laid his fishing outfit upon a log. I told him that I was going to get out early the next morning to see if I could catch a bear feeding. I got up just before daybreak and left the camp without eating. The mosquitoes were bad that night, and I left Bob asleep.

"I crossed over Rainbow Creek and walked down through an open country toward Swift River. I came to an opening in the woods in which there was growing a considerable amount of moss on the rocks, young poplar and other shrubbery, and I was about 250 yards from the bank of Swift River, going north, when I saw something move close to the ground under the small poplars.

"The moment I saw it, it stopped and it looked like it was the hind quarters of a wildcat or small cougar. It was about eight or nine inches from the top of the ground, and I looked at it for a second, jerked my rifle to my shoulder and fired, but the object did not move nor could I hear any sound.

"As quickly as I could pump the gun, I fired again and threw a third shell into the barrel of the gun and would have shot again, when Prigmore cried out: 'Don't shoot again. You have shot me.'

"I ran as hard as I could to Prigmore. He was on his back, bleeding badly from his left breast, and was unconscious. I ran to the river and carried water in my hat and washed his face. I saw he was bleeding badly, and thought he was fatally wounded, because I could hear air being drawn into the wound.

"I stayed with him some time and he commenced to come to after a time. His mind cleared up and he talked to me about the situation. I asked him what he thought I'd better do.

"He reached out his hand and took hold of mine and forgave me

for the awful mistake I had made. He said there was no use to worry about it. I told him I thought he was going to die.

"He told me to give his love to his wife and his children.

"I ran eight and one-half miles down the trail for aid, and when I returned Bob was dead. I had erected a shade over him, but during my absence he had torn it down. He was lying on his back with his hands folded across his breast.

"We made a pack and brought him in this morning. If I had known that Bob was out, I would have been more careful, but I was a mile and one-half from camp, and thought he was asleep. The day before we talked about reckless shooting, and both agreed to be careful. This is the first and saddest accident of my life."

Judge Prigmore was born at Sedalia, Missouri, March 22, 1865. He worked on a farm during his youth, attended the District school, and later took an Academic Course at the State University of Missouri. He subsequently attended the Law School of that University, from which he was graduated in 1889. He began the practice of law in Sedalia, remained there for several years, and then, on account of ill health, removed to Colorado. From Colorado he came to Seattle and served as Deputy Prosecuting Attorney during the two terms of Kenneth Mackintosh, and one year under George F. Vanderveer. He resigned from the latter service to enter private practice and became a member of the firm of Hart, Prigmore & Evans. In 1892 he married Miss Ada P. Hart, sister of John B. Hart, who later became his partner. The fruits of this union are two children; Hazel, sixteen years old, and Robert, ten years old. He continued as a member of that firm until March 22nd last, when he was appointed Superior Judge, under the Act providing two additional Judges for King County. He gave great satisfaction to the Bar during his brief incumbency of that office. An insight into his modesty and worth is afforded by Mr. W. T. Dovell in these words:

"I was associated with him in two cases of considerable magnitude in which the issues were very involved, and came to know that his mind ran along the straight, true groove and that he was incapable of levious methods of reasoning. To show the modesty and sterling qualities of the man, I will recite that at the time he was being mentioned for possible appointment to the Superior Bench he came to me and asked me frankly whether I thought he was qualified for that position, assuring me at the time that he would not take it amiss if I said that he did not measure up."

In a memorial address upon Judge Prigmore delivered before the Bench and Bar of King County, the following, scholarly and eloquent tribute was paid by Judge Robert B. Albertson:

"Brethren of the Bench and Bar: The seat of sorrow is in the

heart and it has been well said 'the heart speaks most when the lips move not.' The only solace for the stricken soul is to be found in silence and solitude. The deepest transports of our nature shrink from the glare of public view:

'My heart is in the coffin there with Caesar,
And I must pause till it come back to me.'

is the voiceless tribute wrung by grief from every Anthony. I believe all of us may truly say, as now we observe the rites of love bereft:

'I have within me that which passeth show,
These but the trappings and the suits of woe.'

"But, yet, we find consoling grace in gathering here to pay our parting tribute to the lamented dead. While the strain of sorrow must attune the memorial note, the mournful tone is yet relieved by ringing chimes that brighten every measure. Although we bend once more beneath the yoke of sad affliction, yet our hearts may lift with pride as we review the roster of our loved and lost.

"How oft, indeed, have we been forced to feel that 'death loves a shining mark, a signal blow!' Time and again this Bench and Bar alike have flushed the scythe of the remorseless Reaper. As I look around today and note the loss of so many of our best and brightest—as I vainly sigh for the touch of vanished hands, the sound of voices forever still—I feel that I might well exclaim:

'When I remember all the friends, so linked together,
I've seen around me fall, like leaves in wintry weather,
I feel like one who treads alone some banquet hall deserted,
Whose lights are fled, whose garlands dead, and all but he departed.'

"Our weak mortality always trembles in the presence of grim Death. In whatever form or at whatever time it may come, the impenetrable mystery fills us with sorrow and solicitude. But the philosophy of man learns to bow with a degree of resignation to the common lot of all, when the inevitable end is foreshadowed to our view. When a good man whom we have known and loved departs this life, even in the usual course of nature, we mourn and are for a time disconsolate. But the recollection of his virtues and graces is a healing balm that takes the sting from sorrow when we can recall his career as rounded and complete.

"In the death of Robert W. Prigmore, we are overwhelmed today with more than the first pangs of grief. His untimely end was a tragedy that leaves us shocked and appalled. The bitterness of his

fate leaves us without comfort—it seems to us now without the hope of it. There was a cruel irony of fate in evrey circumstance of his taking off. He was cut down without warning or premonition while in the maturity of his manhood and in the plenitude of his powers. He died alone in the shades of a primeval forest, away from his wife and children whom he loved so tenderly, while in quest of healthful pastime and a well earned rest from his labors. That such a man should have met with such a fate passeth the understanding of our finite minds. But he met it with the courage of a noble manhood, and the smile that yet glorifies his face attests that there was no fear or bitterness in his gentle spirit as it breathed farewell to all that he loved on earth.

"To speak naught but good of the dead is a rule that convention has prescribed for memorial occasions. It is a custom that at times might be honored more in the breach than in the observance. But, while I would not offend the shades of our departed brother with words of fulsome praise, I can sincerely say that I have never heard him speak ill of his fellows, nor have I ever heard anyone speak ill of him. He was a man of exalted character both in private and public life. Through all vicissitudes which mixed the bitter with the sweet, he steered a steady course and kept unsoiled his native sensibility. He moved in self-respect among the high nor did he deign by demagogic arts to gull the favors of the low. His unbought grace despised the snob and sycophant, and yet his mien of dignity was but the shield of manly pride, the reserve of generous sentiment. He did not wear his heart upon his sleeve, but within a warm humanity pulsed deep and strong. He was a splendid type of plain, every day American citizenship. He forged his way from the farm of his boyhood with duty as his watchword and steadfast beacon light.

"Our brother Prigmore was a modest man, quiet and unobtrusive, who kept in life the noiseless tenor of his way. He was of that gentle type, who, with rare grace and talent, are yet so often 'born to blush unseen.' Alas, that we should be so prone to measure merit merely by the mark it makes, heedless of virtue clothed in shrinking modesty, callous to hungry grace and genius, only hearkening to the hail of worth when chance and character conjoin to seize the rightful due, or, perchance, when all too late the sense of pleading charms that bloomed in long neglect comes only with the frost that shrouds them from our sight.

"But the high merits of our brother could not fail to meet with ultimate recognition. Slowly but surely, he felt and found his way. He was an honor to the Bench and Bar of this State. In his death I principles of our jurisprudence. He was a safe counsellor and as an

advocate was earnest and effective. He brought to the Bench a well-trained mind that was stored with legal knowledge. As a practitioner, he was imbued with a high sense of professional ethics; while as a Judge he lived up to the highest standards of his office. As one of his associates during the brief term for which he was spared, I learned to recognize and esteem his exceptional qualities of heart and head. He was an honor to the Bench and Bar of this State. In his death I feel a sense of personal bereavement.

"What may have been his creed I do not know, but suffice it to say that his life was an exemplification of the broad religion of humanity. He believed with the poet:

'He prayeth well who loveth well
Both man and bird and beast:
He prayeth best who loveth best
All things both great and small;
For the dear Lord who loveth us
He made and loveth all.'

"I am fain to believe that in the goodly fellowship of just men made perfect, our brother has reaped the reward of an earthly fight that was well fought.

"We may not look back of the veil that shrouds the unrecorded past, nor read the scroll of the infinite future. It is not vouchsafed to the finite mind of man to solve the studendous riddle of human life. But while earth that nourished us shall surely claim our growth to be resolved to earth again, what soul so dead that does not glow with a conscious spark caught from celestial fires?

"It is a sweet assurance of this hour that our brother crossed the Stygian wave soothed and sustained by an unfaltering trust. May not we, the pale watchers by the shore, behold, in nourishing that faith sublime, a blessed bow of promise, bending in beauty from the skies to lead us on with kindly light?

"There is no death! Although we grieve
When beautiful familiar forms
That we have learned to love are torn
From our embracing arms—

Although with bowed and breaking heart,
With sable garb and silent tread,
We bear their senseless dust to rest,
We say that they are "dead"—

They are not dead! They have but passed
Beyond the mists that blind us here,
Into the new and larger life
Of that serener sphere.

They have but dropped their robe of clay
To put their shining raiment on;
They have not wandered far away—
They are not "lost' or "gone."

Though disenthralled and glorified,
They still are here and love us yet;
The dear ones they have left behind
They never can forget.

And sometimes when our hearts grow faint
Amid temptations fierce and deep,
Or when the wildly raging waves
Of grief or passion sweep—

We feel upon our fevered brow
Their gentle touch, their breath of balm,
Their arms enfold us, and our hearts
Grow comforted and calm.

And ever near us, though unseen,
The dear immortal spirits tread—
For all the boundless universe
Is Life—there are no dead!"

SECOND ANNUAL CONVENTION OF THE STATE ASSOCIATION OF PROSECUTING ATTORNEYS, HELD AT SPOKANE, WASHINGTON, JULY 27, 28 AND 29, 1911

Meeting was called to order by Vice-President Everett J. Smith, of Walla Walla County, who made a short address.

Minutes of the last meeting were read and approved.

Members of the Association represented at the meeting were as follows:

Atty. Gen. W. V. Tanner.
Asst. Atty. Gen. S. H. Kelleran.
J. R. Buxton, of Lewis County.
R. L. McWilliams, Chief Deputy of Spokane County.
Lon Boyle, of Benton County.
Paul Pattison, of Whitman County.
F. L. Stottler, Chief Deputy of Whitman County.
F. W. Tempes, of Clarke County.
R. M. Sturdevant, of Columbia County.
Frank W. Bixby, of Whatcom County.
Everett J. Smith, of Walla Walla County.
John Truax, of Adams County.
H. W. Stull, of Stevens County.
N. M. Sorenson, of Chelan County.

Section 1 of Article 2 of the Constitution regarding membership was amended to include "deputy and assisting prosecuting attorneys."

It was moved and carried that the president appoint a committee on program to be given at the next meeting to be held at the same time and place as the meeting of the State

Bar Association in 1912 except the meeting shall be called one day earlier than that scheduled for the Bar Association.

It was moved and carried that the Constitution should be amended by two-thirds vote of the members present at any meeting.

Among other topics discussed by the Association were the following:

Local Option Law.

Noxious Weed Law.

Sections of the Criminal Code regarding Larceny, Murder, Adultery, and Gambling.

Legality of County Warrants.

Position to be taken by prosecuting attorneys in defending public officers who have acted contrary to the attorney's advice.

Extended remarks were made by Attorney General W. V. Tanner regarding duties of the presouting attorney when county commissioners seek to exceed legal limits in the matter of county indebtedness and especially in the matter of overdrawing county road and bridge funds.

Officers for the ensuing year were elected as follows: President—Everett J. Smith, of Walla Walla; Vice-President—J. R. Buxton, Centralia; Secretary—John Truax, of Adams County.

The following address was made by Prosecuting Attorney J. R. Buxton of Lewis County:

"Mr. President and Gentlemen:

Having been invited by the President of our Association to deliver a short address before this body I promise you that my remarks shall have at least one merit—brevity.

The attempt at the last session of the legislature to divest the office of Prosecuting Attorney of all original powers and to place the Prosecuting Attorney in the position of a mere office boy should arouse us to the fact that the right and powers which the Constitution and laws of this State now give us can be kept only by eternal vigilence. As you know, a bill passed the lower house of the Legislature last winter which gave the office of Attorney General the absolute power and authority to begin original suits, both civil and criminal, in any County of the State, and to brush aside the Prosecuting Attorney, and the only privilege which was reserved to the County was that of paying for the litigation. Through the efforts of members of our Association, ably led by our President, this bill was defeated in the Senate, but only after a vigorous and bitter fight. I was present during the battle and inquiring into the causes of the introduction of such an iniquitous bill, ascertained that some Prosecuting Attorney had neglected or failed to institute certain criminal proceedings, which in his opinion, after a careful investigation, he decided he could not maintain. Every Prosecuting Attorney knows that if he did not turn a deaf ear to at least fifty per cent of the cases that are presented to him, his County would go bankrupt. Each Prosecuting Attorney knows the local conditions; knows what evidence is necessary to secure a conviction much better than an officer who perhaps has his office 300 miles from the scene of the crime. I am not aware that the present system of transacting civil and criminal business of the various Counties is unsatisfactory to the people or that any improvement can be made by the abolition of this office or taking from it all its powers and duties. It behoves us in the future to see to it that this office does not become the tail to some State Officer's political kite.

And now as to the duties of the office: Chapter 75, Laws

of 1911, provide "That the Prosecuting Attorney of each County shall have authority and it shall be his duty, subject to the supervisory control and direction of the Attorney General, to appear for and represent the State and the County and all school districts in the County in which he is a Prosecuting Attorney, in all criminal and civil actions and proceedings in such County in which the State or such County or such school dstrict is a party."

The other duties of the Prosecuting Attorney are defined by Chapter 11, Rem. & Bal. Annotated Codes and Statutes of Washington, Volume 2. I believe it is a matter of vital importance to the proper administration of the criminal laws of this state that a number of changes be made, placing the State on an equal footing with the defendant. There is no reason why the defendant should have double the number of pre-emptory challenges, nor is there any reason why a defendant whose substantial rights have not been affected by any proceeding in the trial, either in the judge's charge, the drawing of the jury, the remarks of the Prosecuting Attorney, or in any other manner, should be allowed a new trial. The courts also should frown upon any attempt on the part of the defendant or his counsel to arrange the 'stage settings' so as to win the sympathy of the jury, who, alas for the State. are sometimes not only soft hearted but soft headed and not more competent than would be a jury drawn from the incurable ward of the insane asylum.

The people are becoming very weary of the methods adopted by some attorneys in the defense of criminals. There was a time when the defendant's rights in a criminal case were too few but now the pendulum has swung the other way and the State's rights are disregarded and unprotected. Often we see men who are red handed go forth from the court room unwhipped of justice. However, in the more recent decisions

of our Supreme Court there is substantial ground for believing that mere technicalities will be brushed aside by that able and learned tribunal. There is no County office more important than that of the Prosecuting Attorney. He holds in his keeping the liberity and the property rights of the citizens and it is as much his duty to protect the innocent as it is to punish the guilty, and as over sixty per cent of the business is County business there is no office in which the citizen has so great an interest as in this. In importance it is not secondary to that of the judge. He is the advisor of every County officer, of every Municipal and school district officer, and on his judgment depend important interests, financial and otherwise.

In my annual report for the year ending December 31, 1909, I made to the Governor the following suggestion:

"The Prosecuting Attorney suggests that it would assist in the economical and vigorous enforcement of the law if he had the right to issue subpoenas for witnesses and examine them under oath, which action in many cases would result in saving the County the expense of bringing the witnesses a long distance to testify in justice court and would enable him to procure evidence when the crime was first perpetrated and before the witnesses were seen by the friends of the accused. This right would not impose a burden upon the State, but would often result in procuring evidence which afterwards, by lapse of time or from other cause, is lost or its value greatly impaired. Witnesses are frequently spirited out of the country, beyond the jurisdiction of the court, resulting in the miscarriage of justice. As the law imposes upon the County attorney the duty of suggesting legislation which will aid in the efficient enforcement of the law, he suggests the passage of a law having these ends in view."

CONSTITUTION OF THE ASSOCIATION.

ARTICLE I.

Name and Purpose.

Section 1. This Association shall be known as the Washington State Association of County Prosecuting Attorneys.

Sec. 2. The purpose of this Association shall be the discussion of such questions of criminal and civil law and procedure as may arise in the various Counties and under new laws; the recommendation to the State Legislature of such changes in the Criminal Code as may in the fullness of our experience be deemed advisable; and in general, such co-operation as shall be expedient for the efficient enforcement of the law.

ARTICLE II.

Membership.

Section 1. The membership of this Association shall comprise each and every Prosecuting Attorney in the State and their respective successors who may be elected or otherwise chosen, and all deputy and assisting Prosecuting Attorneys.

Sec. 2. The State Attorney General and his deputies and assistants shall be honorary members of this Association.

ARTICLE III.

Meetings.

Section 1. This Association shall hold an annual meeting at the same place as the meeting of the Washington State Bar Association, the time of this meeting to begin at ten o'clock

in the forenoon next previous to the opening of the session of the State Bar Association.

ARTICLE IV.

Officers.

Section 1. The officers of this Association shall be a President, Vice-President, and Secretary-Treasurer, each of whom shall hold office for one year and until such a time as their successors are elected. In case both the President and Vice-President of the Association ceases to be a Prosecuting Attorney during the term of his office, the Secretary-Treasurer shall, in that case, assume the duties of President, and should the Secretary-Treasurer cease to be Prosecuting Attorney of his County, then and in that event, the President of the Association shall fill the vacancy by appointment.

Sec. 2. There shall be a committee of three members appointed annually by the President to formulate and outline subjects for discussion and to assign subjects to the several members of the organization for the purpose of preparing papers discussing the subjects so assigned. It shall be the duty of this committee to assign the various topics to be so discussed at least one month previous to the meeting of the Association.

Sec. 3. Such other committees may be appointed or elected from time to time as shall be deemed expedient.

PAPERS READ

Year	Writer	Subject.
1894	John Arthur	President's Address—"Lawyers in Their Relations With the State."
"	R. A. Ballinger	"Our Community Property Laws."
"	Frank H. Graves	"Non-Partisan Selection of the Judiciary."
"	Thomas Carroll	"Policy of Redemption Laws."
"	John W. Pratt	"Government of Cities."
"	Charles S. Fogg	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis	"Our Exemption Laws."
"	Frank T. Post	"The Material Man's Lien."
"	Orange Jacobs	"Reminiscences of the Bench and Bar of Washington."
1895	George M. Forster	President's Address.
"	George Turner	"Practice and Procedure in the State of Washington."
"	Charles O. Bates	"Juries and Jury Trials."
"	David E. Baily	"Stare Decisis."
"	C. H. Hanford	"Jurisdiction of American Courts, State and Federal."
"	John J. McGilvra	"The Pioneer Judges and Lawyers of Washington."
1896	Charles S. Fogg	President s Address—"The Law and Lawyer in History."
"	T. N. Allen	"Judicial Legislation."
"	N. T. Caton	"Pioneer Judges and Lawyers."
"	Emmett N. Parker	"Probate Law and Practice in Washington."
"	George Donworth	"Corporations."
"	R. S. Holt	"Contributory Negligence."
"	James Z. Moore	"Landlord and Tenant."
"	Alfred Battle	"Record Notice and Curative Acts."
"	W. T. Dovell	"Bench and Bar."

Year	Writer	Subject.
1897..	Harold Preston	President's Address.
" ..	E. B. Leaming	"Philosophy of the Law."
" ..	W. H. Pritchard	"The Policy and Practical Effect of Usury Laws."
" ..	Ben Sheeks	"Some Judicial Opinions—A Study."
" ..	Austin Mires	"Irrigation and Water Rights in the State of Washington."
" ..	John P. Hoyt	"Reminiscences of the Bench and Bar of Washington."
1898..	George Turner	President's Address.
" ..	W. C. Sharpstein	Annexation of Foreign Territory; its Constitutionality and Expediency."
" ..	F. H. Brownell	"Mining Laws in Washington."
" ..	James Wickersham...	"The Constitution of China—A Study in Primitive Law."
" ..	Henry M. Hoyt	"The Legal Effect of Mortgages and Pledges of Rents and Profits of Real Estate."
" ..	Frederick Bausman ..	'Public Policy as an Element of Judicial Construction.'
1899..	Theodore L. Stiles ...	President's Address—"Legislative Encroachments on Private Rights."
" ..	James G. McClinton ..	"Reform in Criminal Procedure."
" ..	Byron Millett	"Fourteenth Amendment to the United States Constitution."
" ..	George H. Walker ...	"What Shall be Done About the Trusts?"
" ..	E. F. Blaine	"Decennial of Our State Constitution."
" ..	Samuel R. Stern	"The Law and the Laborer."
1900..	George Donworth	President's Address—"The Passing of Precedent."
" ..	Will H. Thompson ...	"The Status of Our Newly-Acquired Territory."
" ..	Herbert S. Griggs	"Admiralty Practice."
" ..	Charles E. Shepard ..	"Limitations on Municipal Indebtedness"
" ..	C. W. Hodgdon	"Government Ownership of Railroads."
" ..	J. B. Davidson	"Needed Reforms in the Laws of Marriage and Divorce."
" ..	Thomas B. Hardin ...	"How Should United States Senators Be Elected."

Year	Writer	Subject.
1901..	Samuel R. Stern	President's Address.
" ..	A. G. Kellam	"The Trust Fund Theory of Corporation Assets."
" ..	T. O. Abbott	"Advantages of the Torrens System of Conveyancing."
" ..	E. G. Kreider	"Law Reporting."
" ..	Joseph Shippen	"The Insular Questions and Their Solution by the Supreme Court of the United States."
1902..	August Mires	President's Address.
" ..	Edward Whitson	"The Course of Legislation in Washington.'
" ..	Will G. Graves	"Stability of Legal Principles—A Thing of the Past."
" ..	Arthur Remington ...	"Railway and Transportation Commissions."
" ..	C. H. Hanford	"Conflicting Decisions of Federal and State Courts."
..	Orange Jacobs	"Reminiscences of Bench and Bar."
" ..	Edward Pruyn	Poem—"A Day in Court."
1903..	R. G. Hudson	President's Address—"Trusts."
" ..	F. D. Nash	"Street Assessments."
" ..	N. T. Caton	"Some Pioneer Judges and Lawyers I Have Known."
" ..	L. Frank Brown	"The Use and Abuse of the Labor Union."
" ..	Thomas Burke	The Life and Character of John B. Allen."
" ..	John T. Condon	"A Theory of Legal Obligation."
" ..	James B. Reavis	"Taxation of Franchises.'
1904..	W. A. Peters	President's Address.
" ..	Carrol B. Graves	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."
" ..	E. C. Macdonald	"Relief of our State and Federal Courts.'
" ..	Alfred Battle	For Affirmative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?'
" ..	Theo. L. Stiles	For Negative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"

Year	Writer	Subject.
1905..	Edward Whitson	President's Address.
" ..	S. M. Bruce	"The Jury System."
" ..	Harvey L. Johnson ...	"The Development of the Law of Labor and Labor Organizations.'
" ..	Geo. Ladd Munn	"The Community Property Law and Non-Residents."
" ..	C. C. Gose	"Is the Provision of Our State Constitution Relative to Private Ways of Necessity in Conflict With the Fourteenth Amendment?"
1906..	Francis H. Brownell..	President's Address.
" ..	Frank H. Rudkin	"The Court's Work."
" ..	Geo. E. Wright	"Some Questions of Real Estate Law."
" ..	Henry McLean	"The Evolution of State Legislative Methods."
" ..	James M. Ashton	"Maritime Law.'
" ..	J. B. Bridges	"Log Booms on Navigable Rivers."
1907..	E. C. Hughes	President's Address.
" ..	James R. Garfield ... Secretary of Interior	"The Commerce Clause of the Constitution."
" ..	H. E. Hadley	"The Lawyer Under Fire."
" ..	F. T. Post	"Our Community Property Law."
" ..	W. H. Abel	"Navigable Waters."
..	H. G. Rowland	"Tide Lands."
" ..	James F. Ailshie, Chief Justice of Idaho	"The Lawyer as a Conservative."
" ..	Dr. Elmer E. Heg	"Our Sanitary Laws."
" ..	Chas. W. Fairbanks, Vice-President of the United States	"The Lawyer."
1908..	A. G. Avery	President's Address.
1909..	J. B. Bridges	President's Address.
" ..	James E. Babb, Lewiston, Idaho	"Effect of Overruling Opinion of Court of Last Resort on Rights Acquired on Opinion Overruled."
" ..	W. W. Cotton, Portland, Ore.	"Due Process of Law in Connection With Railroad Rate Legislation."
" ..	Robert Cassidy, K. C., Vancouver, B. C.	"Courts of Canada."

Year	Writer	Subject.
1910.	C. C. Gose	President's Address.
"	Ira Bronson	"Admiralty Jurisdiction."
"	Charles W. Dorr	"Federal and State Control of Waters, Including Fisheries."
"	George Donworth	"The Work of Some of Our Late Associate Justices of the United States Supreme Court."
"	Benjamin S. Grosscup.	"The Late Chief Justice Fuller."
1911.	Clinton W. Howard	President's Address.
"	Stephen J. Chadwick.	"Delays of Courts."
"	Fred H. Peterson	"The Courts of Germany.'
"	Frank S. Dietrich	"The Facts in the Case."
"	T. J. Walsh	"The Recall of Judges."
"	Russell L. Dunn	"The Ownership of Property in the United States by the Federal Government, Whether as Proprietor or Sovereign."
"	W. T. Dovell	"The Late Edward Whitson."

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B. S. GROSSCUP
PRESIDENT

PROCEEDINGS

Washington State Bar Association

HELD IN THE CITY OF

TACOMA, WASHINGTON

JULY 30-31 AND AUG. 1, 1912

TWENTY-FOURTH ANNUAL CONVENTION

OFFICIAL REPORTER
O. C. GASTON
EVERETT, WASHINGTON

OLYMPIA, WASHINGTON
1912
THE EFFENBEE PUBLISHING CO.

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John H. Pedigo.....Walla Walla
Howard Hathaway.....Everett

shall enjoy every convenience, comfort and pleasure that her facilities afford, and so, as Major Bates promised you a year ago at Spokane, we are going to give you, or try to give you, a right royal welcome. I am informed, by the minutes of the association, that Major Bates, evidently somewhat affected by the exuberant spirits that flow with such prodigality in the Inland empire, included in his invitation some promises it is impossible to carry out in detail. One thing that was promised was a trip by automobile to the summit of the mountain. As that is not feasible, we intend to use a convoy of airships for that purpose. It also included a stop-over-night at the crater, probably to cool off your fevered brows, and a return, when you had thawed out, in the course of the next five or ten thousand years. Mr. Dovell, your worthy president, rather insisted that the promises ought to be fulfilled to the letter, although he regretted that he, personally, would be unable to wait for the thaw, but he did feel that the plan was most admirably devised to get rid of certain of your objectionable lime-light artists who have heretofore been evidently only flirting with the Republican elephantess, as they are now lined up with the bull moose. The executive committee, however, voted down the suggestion, although conceding its timeliness, but they thought it was out of order, as this session was to be a strictly closed season and neither the grand old elephantess, the bull moose nor the New Jersey jack was to be molested. So the program as published will be carried out.

You have serious work before you and it is because of the importance of that work that Tacoma is particularly pleased to be the hostess of the association at this time. Each meeting of this association has shown steady improvement in careful preparation of papers, in breadth of culture and fearlessness of discussion. From an examination of the program, from the personnel of the association officials and of the men who have these discussions in charge, it is evident that the present session will equal, and probably surpass, any former session in both interest and value. And it is well that this is so. When one-half of our people are engaged in the gay

pursuit of pleasure without regard to expense, or, as one cynic puts it, in the reckless pursuit of expense without regard to pleasure, and the other half think they have no pleasures and are devoting themselves to the sole purpose of turning the tables, so that the body politic is in sore travail and it is a question whether it will bring forth a stalwart or an imbecile, it is fitting that at such a time your active, forceful and controlled intelligence should be seriously busy. It is, therefore, very important that we recognize the danger and our desire to work out those problems for which there is universal demand. It is a matter, gentlemen, of great importance that we should meet the responsibilities that the times have put upon us, because it is absolutely sure that these reforms and changes will be worked out upon some line, and, if we do not work them out upon safe lines, they will probably be worked out along unsafe, unsound and unwholesome lines, and the responsibility for that class of legislation will rest, not so much upon the people of the state, as upon the members of the bar, if they are content to remain mere camp followers instead of being leaders.

It is because Tacoma is particularly interested in such matters, it is because we are, as some say, a little bit conservative, possibly a little bit slow, that we appreciate the opportunity we have to listen to the discussion of such important subjects, and I beg to assure you that we welcome you here not only with the warmth that comes from admiration and appreciation and affection for you personally, but with the added warmth that comes from a keen appreciation of the importance of these subjects and the ability of you men to handle them on safe, progressive and comprehensive lines, and we rest secure in that confidence. I thank you.

Mr. President: We have asked Judge George Morris, of Olympia, to respond on behalf of the State Bar association.

RESPONSE TO ADDRESS OF WELCOME.
By Judge Geo. E. Morris.

Mr. President, Members of the State Bar Association, and Mr. Griggs and Members of the Pierce County Bar Association, Gentlemen:

You have, in a very pleasing address, given us a cordial greeting and hearty welcome, and, assuming that you mean what you say, we accept it in the same spirit of cordiality which you have afforded it. It is needless of you, sir, to speak of Tacoma as a host, or as a dispenser of hot air, or any of those other things that you have mentioned. We know it well. For instance, down in that department of the state government in which I have the honor to serve we have a high regard for Tacoma in those respects, especially since my brother Parker and my brother Ellis came upon the bench. They have convinced us that Tacoma has a peculiar quality of hot air, not always convincing but always contentious and peculiar. Now, I never could understand why it should be thought necessary to place upon the program, whenever a state bar association meets at any city in the state, an address of welcome; I never could understand why any city or community would want to welcome a lot of lawyers to their midst. We are supposed to belong to the class known as non-producers; we toil not, neither do we spin, nor gather into barns, and yet we have to be fed. It is fortunate, I suppose, that we have the ability or suppose we have the ability, at least, to teach others how best to toil and how best to weave and how best to spin, and are thus able to divide the unearned increment with them.

I noted some time ago that Tacoma had some trouble with the director of the census, that he was not willing to accord you the population to which you were undoubtedly justly entitled, but I have noticed, from reading the daily papers lately, that that does not seem to have abated one jot or one tittle the patriotism of the citizens of Tacoma, for I have no-

ticed that some one citizen of the City of Tacoma has filed for every office in the state primary, from governor down. Now, I am glad that you are able to overcome this great drawback of lack of population, and, notwithstanding you may not be credited with the one hundred thousand population, or more, that you think you have, you can, by this act, prove to the citizens of the state and country at large that you have not lost your respect for office, and are willing to serve your country in any capacity it may need you, providing the salary is large enough.

And now, Mr. President of the Pierce County Bar Association, I assure you that when we have finished our labors here among you that we will return to you the keys of the city untarnished, provided, in the meantime, we have been able to find a locksmith that will make us a duplicate set.

Mr. President: The next matter on the program is the report of the secretary.

SECRETARY'S REPORT.

To Washington State Bar Association:

GENTLEMEN: As Secretary, I hereby submit my report for the period commencing July 1, 1911, and ending June 30, 1912:

Membership per last report	500	
New members admitted	58	
Reinstated	85	
Total		643
Died during year	5	
Withdrawn	9	
		14
Membership to date		629
Number of members more than two years in arrears in dues		63

Financial Statement.

Collection since last report.....$855.00

EXPENDITURES.

July, 1911.	Trip to Tacoma, Seattle, Everett, Bellingham, Portland, Vancouver, arranging program	$30.00	
	Telegraphing and telephoning	18.00	
	Programs and circulars, printing	11.00	
	Expenses of meeting at Spokane:		
	Stenographer	27.30	
	Secretary, personal	28.00	
	Fare and expenses of Dunn from San Francisco and return	125.70	
	For other speakers and miscellaneous.	18.00	
	Postage	18.00	
	Printing proceedings, 1,000 copies	283.50	
	Separate addresses	50.55	
	Cuts	20.00	
	Addressed cards	10.00	
	Extra composition	3.75	
	Postage	76.00	
	Telephoning and telegraphing	7.40	
	Letter heads and envelopes	12.50	
	Clerk hire	60.00	
		$802.40	
	Balance of receipts over expenditures	43.60	
			$855.00

Upon motion the report was adopted as read.

Mr. President: The next matter is the report of the treasurer.

The report of the treasurer is read by the secretary.

TREASURER'S REPORT.

OLYMPIA, WASH., July 1, 1912.

Amount on hand as per last report	$581.00	
Received from Secretary	855.00	
		$1,436.00
Paid warrant No. 36		802.40
Balance on hand July 1, 1912		$633.60

ARTHUR REMINGTON, *Treasurer.*

Mr. President: The report of the treasurer will go to the executive committee, unless some other action is desired by the association.

Mr. President: The next order of business is the report of the committee on membership. Is that committee ready to report?

The report is read, as follows:

REPORT OF THE COMMITTEE ON MEMBERSHIP.

TACOMA, WASH., July 30, 1912.

To the Washington State Bar Association:

GENTLEMEN: Your Committee on Membership reports that it has approved for membership in this Association the names herewith submitted:

Albert, Chas. S., G. N. Passenger Station	Spokane
Allen, Charles E., 630-1 N. Y. Block	Seattle
Aylmore, Reeves, Jr., 575 Colman Bldg	Seattle
Batchelor, Chester A., 332 N. Y. Block	Seattle
Bell, Eugene W., 749-51 N. Y. Block	Seattle
Burkey, J. E., 807 Nat'l Realty Building	Tacoma
Campbell, R. E	Olympia
Carey, Stephen H	Olympia
Churchill, F. B	Kent
Claypool, C. E	Olympia
Cochran, J. E	Port Angeles
Desmond, Grover E., 1311 Alaska Bldg	Seattle
Garland, Marion	Shelton
Goodale, Robt. C., 1408 Hoge Building	Seattle
Grady, Thomas E., Court House	North Yakima
Green, Frank E., Burke Building	Seattle
Greenman, F. W., 1222 Fidelity Building	Tacoma
Greshman, Wilson C	Conconully
Hamlin, Robert D., 710 N. Y. Block	Seattle
Hammond, Frank, 801 Epler Block	Seattle
Hay, W. W., 540-1 N. Y. Block	Seattle
Henderson, Scott Z	Kennewick
Hendron, Carroll, 701 N. Y. Block	Seattle
Hilen, A. R	Mt. Vernon
Hoeffler, J. V	Cle Elum
Joujon-Roche, J. B., 661-670 Colman Bldg	Seattle
Kennan, S. A., Empire Building	Seattle

Leonard, P. F.....Pasco
Lewis, Warren H., 634 Lumber Ex. Bldg.....Seattle
Lyle, J. T. S.....Olympia
Lynch, John H.....North Yakima
Mathews, John W.....Republic
Moore, F. W., Citizens' Bank Building.....Bremerton
Murphy, John F., 1116 Alaska Building.....Seattle
Murray, F. H.....Tacoma
O'Brien, C. M.....Pasco
Paul, Frank A., 64 Haller Building.....Seattle
Peters, Walter D.....Bremerton
Poe, C. K., 405 N. Y. Block.....Seattle
Reading, Harry W.....Metaline Falls
Robinson, John Sherman, 614 Colman Building.....Seattle
Sheller, Wm. G., 329 Stokes Building.....Everett
Slattery, John, Northern Bank Building.....Seattle
Sullivan, John J., 412-416 Arcade Annex.....Seattle
Sutton, C. D.....Port Orchard
Waterman, Howard, 735 N. Y. Block.....Seattle
Whittlesey, Chas. T., 802 3rd Ave.....Seattle
Williams, Burt J.....Wenatchee

W. C. MORROW, *Chairman.*

Mr. President: Have these names been approved by the committee?

Mr. Morrow: They have been so approved.

Mr. President: Under the rules, a vote may be demanded upon any name included in that report. Do I hear a demand for a vote upon any name read? If a vote is not demanded upon any of these names, they will be considered as elected members of the association. Hearing no demand for a vote, I declare those whose names have been read regularly elected members of the association.

Mr. President: The next matter upon the program is the reading of the President's address. Judge Kellogg, will you take the chair.

Hon. John A. Kellogg assumes the chair.

Mr. Chairman: Gentlemen of the association, the president's address, by President Dovell.

(For President's Address, see Appendix).

Mr. Chairman: Gentlemen of the Association, if discussion of any matters touched upon by this magnificent paper and address of the president is desired, it may be taken up at a later time when opportunity will be given.

President Dovell assumes the chair.

Mr. President: The chair is asked to announce that the executive committee will meet in this room immediately upon adjournment, and Mr. Griggs, of Tacoma, is requested to meet with them. This ends the program for the morning session, unless there is a suggestion.

We will consider ourselves adjourned until the hour of one-thirty this afternoon.

Afternoon Session, 1:30 O'Clock, Wednesday, July 31, 1912.

Mr. President: Gentlemen will be in order, please. The first matter upon the program for this afternoon is the report of the committee on delays in judicial procedure.

The governor of the state appointed a commission upon reform in judicial procedure, and named upon that committee Mr. Harold Preston, of Seattle; Mr. Condon, of Seattle; Judge Holcomb, of Ritzville; Frank T. Post, of Spokane; Will Graves, of Spokane; Seabury Merritt, of Spokane; W. H. Gorham and J. H. Powell, of Seattle; John P. Fletcher, of Tacoma; and J. B. Bridges and John C. Hogan, of Aberdeen. This commission prepared and had printed as a tentative report, the result of their deliberations. This commission has kindly consented to present their tentative report to us for discussion. The secretary has mailed this to you in the form of a letter. Printed copies can be had at the secretary's desk. I apprehend that all the members have seen the printed copy of the report, but to make it a part of the record I shall ask the secretary to read the circular.

WASHINGTON STATE BAR ASSOCIATION.
Office of Secretary.

GENTLEMEN: Your attention is called to some of the matters that will be brought before the Bar Association for discussion. The various committees have failed to file their reports in time to have same printed, except, however, the matters referred to below will come under the report of Committee on Delays in Judicial Procedure.

The governor, believing a demand existed for a change in our system of procedure, appointed eleven of the prominent members of the bar and styled them collectively "A Commission on Reform of Judicial Procedure," and charged them to prepare the necessary bills to be presented to the legislature that would carry out such recommendations as they should make. This commission consists of Harold Preston, Seattle, chairman; Dean John T. Condon, Seattle, secretary; Judge O. R. Holcomb, Ritzville; Will G. Graves, Frank T. Post and Seabury Merritt, Spokane; W. H. Gorham and J. H. Powell, Seattle; John D. Fletcher, Tacoma; and J. B. Bridges and John C. Hogan, of Aberdeen. The gentlemen are all members of the association, and with the idea of getting the views of the bar will present their several propositions to the association for discussion.

Probate Code.

The last two named were designated a sub-committee on Probate Procedure, and will recommend a re-writing of the probate law, simplifying it, making it shorter, and giving the court greater discretion in the handling of probate matters.

Hon. J. B. Bridges will present this matter to the association.

Civil Code.

The sub-committee on general civil procedure will submit the following general propositions:

1. The plaintiff to serve upon defendant an informal statement of demand, with notice that the matter will be brought before the court in a preliminary way on a certain date, say ten days. The parties to appear before the court on that day; the court examines preliminarily into the merits of the controversy, with power to put the parties or their representatives under oath; the court makes a preliminary finding, for plaintiff or for defendant, and fixes the amount of bond which the supposed unsuccessful party must give before prosecuting or defending the action, such bond to be large enough to indemnify the opposing party, if ultimately successful, for costs and full attorneys' fees. Bond may be dispensed with if the court finds the party financially unable to give it, such finding to rest in the discretion of the court. The suggestion is that by such a procedure a large proportion of the unmeritorious litigation of the day would be stopped at the threshold. In practice, many disputes would be adjusted amicably at this point.

2. Pleadings to consist of the complaint (the above-mentioned, informal statement may stand as the complaint), the answer, the reply. Demurrers, motions to strike, motions to make more definite and certain, abolished; except that a party may demur in advance of answer or reply, such action to deprive such party of the right to plead further. The answer or reply shall contain all objections of law or fact which the party has to the previous pleading.

3. Either party may demand of the other such information, after issue joined, as may be proper. The demand for inspection of documents, for bill of particulars, the interrogatory, etc., to be abolished as separate methods of procedure, one demand to cover all, to be known, for instance, as a demand for information. In it may be contained all or either of the above named methods of procedure.

4. After issue joined the court, upon motion by either party to the other, shall, at a time stated, settle the issues of law and fact. At this hearing, immaterial or irrelevant matter may be stricken from the pleadings, false contentions as to matters of fact may be eliminated, and the law of the case settled.

5. Either party may examine the opposing party under oath at any time prior to the actual bringing on of the case for trial.

6. An amendment to the constitution to be prepared and submitted with the report, abolishing the inhibition of comment on the facts by court to jury.

Hon. Harold Preston will open discussion on these propositions.

Appellate Procedure.

The sub-committee on Appellate Procedure, Messrs. Graves, Post and Merritt, will present their recommendations in rough draft as follows:

Gentlemen:—Your sub-committee appointed to consider the matter of reform in Appellate Procedure, begs to submit the following recommendations:

We recommend that Section 1 of Article 4 of the Constitution be amended to read as follows:

"The judicial power of the state shall be vested in the supreme court, superior courts, justices of the peace, and such intermediate appellate courts and other courts inferior to the supreme court as the legislature may provide."

We recommend that section 4 of article 4 of the constitution be amended to read as follows:

"The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state offices, and such appellate jurisdiction as may be prescribed by law. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its original, appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by, or on behalf of any person held in actual custody and may make such writs returnable before the supreme court, or before any other court of record of the state or any judge thereof."

We recommend that section 12 of article 4 of the constitution be amended to read as follows:

"The legislature shall prescribe by law the jurisdiction and powers of an intermediate appellate court, or other court inferior to the supreme court, which may be established in pursuance of this constitution."

We recommend that section 15 of article 4 of the constitution be amended to read as follows:

"No judge of a court of record shall be eligible to any other office of public employment than a judicial office or employment during the term for which he shall have been elected."

We recommend that section 17 of article 4 of the constitution be amended to read as follows:

"No person shall be eligible to the office of judge of any court of record unless he shall have been admitted to practice in courts of record of this state or of the territory of Washington."

We recommend that section 28 of article 4 of the constitution be amended to read as follows:

"Every judge of any court of record shall before entering upon the duties of his office take and subscribe an oath that he will support the Constitution of the United States and of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of secretary of state."

We recommend there be added to article 4 of the constitution an additional section to be referred to as section 29, which shall read as follows:

"The legislature may provide that a judge of any court of record may sit temporarily in any other court of record and discharge the duties of a judge of such court."

We recommend that the commission present to the legislature for adoption a bill reading as follows:

An Act Relating to Exceptions, Bill of Exceptions, and Records on Appeal.

Be it enacted by the Legislature of the State of Washington:

Section 1. All rulings and adjudications made upon objections during the progress of the trial, findings of fact, conclusions of law and written orders made by the court, may be reviewed by appellate courts without exceptions having been taken. But instructions given the jury, or requested instructions refused must be excepted to before the return of the verdict or they cannot be reviewed by the appellate courts.

Sec. 2. At the time, or before taking an appeal or applying for a revisory writ, the party seeking a review of any adjudication shall serve upon the adverse party and file in the office of the clerk of the court in which the adjudication was made of which a review is sought, an assignment of errors, which shall state with precision but concisely each ultimate fact found and each ruling made of which complaint will be made on appeal, or on the hearing of any such writ. Each point so presented shall be separately stated and numbered.

Sec. 3. These papers shall be deemed part of the record in any

action or proceeding when filed or as the case may be embodied in a journal entry therein:

(1) Process, pleadings, motions and interrogatories propounded to the parties with the answers thereto.

(2) Verdicts general and special and special findings of a jury.

(3) Written findings of facts and conclusions of law signed by a judge, referee or commissioner.

(4) Reports of referees or commissioners with the testimony and other evidence returned into court therewith.

(5) Rulings and decisions embodied in written judgments, orders or journal entries.

(6) Assignment of errors.

(7) Notice of appeal, appeal bond, and any other paper or process necessary to the taking of an appeal or the securing of a writ.

All other matters occuring in the progress of an action or proceeding, of which a review is sought, must be brought into the record by a bill of exceptions or statement of facts in the manner hereinafter provided.

Sec. 4. A bill of exceptions or statement of facts is ancillary to an assignment of errors and shall be served and filed within the same time as the assignment of which it is an aid. A party to an action or proceeding who desires to have a bill of exceptions or statement of facts settled, shall prepare a proposed draft thereof, serve it upon the adverse party and file it in the cause, within the time hereinbefore prescribed. Within twenty days thereafter the adverse party may serve and file proposed amendments thereto, and within ten days after the service and filing of the amendments, upon notice of either party the bill or statement shall be settled. If no amendments are proposed within the time above fixed, the bill or statement may be settled without notice. In both cases service may precede the filing, and if service cannot be made within the time required, the filing of the proposed bill or statement, or amendments thereto, shall enlarge the time for service until it can be made. In case the judge be absent at the time when a bill or statement ought to be settled, the time for settlement may be postponed until the matter may be submitted to him.

Sec. 5. A proposed bill of exceptions or statement of facts shall contain only so much of the evidence or other proceedings without the record as shall suffice to present the questions made by the assignment of errors. Amendments thereto may consist as well in eliminating unnecessary as in adding necessary matter, and it shall be the duty of the judge in settling a bill of exceptions or statement of facts to strike out everything which is not pertinent to the issues made by the assignment of errors, though no amendments be proposed, or if proposed do not reach the objectionable matters. A bill of exceptions or statement of facts when settled shall be returned to the clerk of the superior court and shall be transmitted by him to the appellate court with such other papers in the case as he may be required to transmit.

Sec. 6. Upon settling a bill of exceptions or statement of facts, the judge shall certify that the matters and proceedings set forth or referred to therein are matters and proceedings occuring in the cause, that it contains everything occurring in the cause which is material to the issues made by the assignment of errors, and that such matters

and proceedings are thereby made a part of the record in the cause. Should matters or proceedings have occurred which any party thereto considers to be material but which is not so regarded by the judge, who therefore refuses to include them in the bill of exceptions or statement of facts, such party may within ten days thereafter present a supplemental bill or statement showing such matters and proceedings, and this shall be certified by the judge to contain matters and proceedings occurring in the progress of the cause, and that they are thereby made a part of the record.

Sec. 7. If the judge before whom the case was heard, shall from any cause have ceased to hold that office the bill of exceptions or statement of facts, shall be settled by his successor. If the matters relating thereto are not agreed upon by the parties, the judge may determine them from the minutes of his predecessor, the stenographer's notes if one were in attendance, the testimony of the judge who heard the cause, if available, and that of the attorneys who participated in the proceedings as to which inquiry is made.

Sec. 8. The supreme court shall have power by rule to make such additions to or corrections in the procedure herein prescribed as shall appear to the court necessary in order to secure the simplest and best presentation of matters of which a review is desired.

Sec. 9. The act entitled, "An Act providing for and regulating the taking of exceptions and the settling and certifying bills of exceptions and statement of facts and declaring the effect thereof," approved March 8, 1893, and all other acts and parts of acts in conflict herewith, are hereby repealed, save that proceedings on all judgments or orders entered prior to the time that this act takes effect, shall be taken under the provision of the act of March 8, 1893, and this act shall apply only to proceedings taken upon judgments or orders entered subsequent to, or on the date it takes effect.

We recommend that Section 1730, Remington & Ballinger's Code, be amended to read as follows:

"Within ninety days after an appeal shall have been taken the appellant shall serve on the respondent three copies of his opening brief on appeal, and within ten days thereafter shall file with the clerk of the supreme court twenty-five copies of such brief with proof or written admission of such service. Within thirty days after the service of the appellant's brief the respondent may serve upon the appellant three copies of an answer brief, and within ten days thereafter shall file with the clerk of the supreme court with like proof of service, twenty-five copies of such brief. Within twenty days thereafter the appellant may serve upon the respondent and file with the clerk of the supreme court a reply brief. Such briefs shall conform to such forms and regulations as may be required by the rules of the supreme court and the time for service and filing herein prescribed may be extended by order of the superior court for good cause shown or by stipulation of the parties."

We recommend that Section 1732, Remington & Ballinger's Code, be amended to read as follows:

"Upon the expiration of the time for filing briefs hereinbefore prescribed or of any extension of time for such filing that may have been granted, if no application for an oral argument shall have been made

as hereinafter provided, the cause shall be deemed submitted for decision upon the briefs on file, and the supreme court shall thereupon take up and decide such cause upon the briefs filed. If either party to an appeal shall desire to orally argue the cause he shall, at the time of filing his brief, notify the clerk of the supreme court, in writing, that he desires to orally argue the cause, stating the points which he wishes to orally present, and the length of time for oral argument that he desires, and shall pay to the clerk a fee of twenty-five ($25.00) dollars in addition to the other fees required by statute, which additional fee shall be accounted for by the clerk of the supreme court as are other fees collected by him. Ten days before the beginning of any stated session of the court there shall be placed on the calendar for oral argument all causes in which a demand for oral argument has been made as hereinbefore prescribed. In assigning cases for oral argument the court shall allow such time for the argument of each case as it shall deem necessary for the proper presentation of the case by oral argument."

We are of opinion that the time for taking appeals and for taking the various steps in connection with appeals might well be shortened. At the present time it is possible for a case to be carried over two terms of court. In view, however, of the congested condition of business in the supreme court and the impossibility to prognosticate with accuracy the relief which will be afforded by the measures proposed, we are of opinion that no action along the line of shortening the time for appellate proceedings should now be taken. If any action should be taken along these lines its effect should be postponed until such time as the congested condition of business in the supreme court should warrant its becoming effectual.

Mr. President: Does any member of the association care to discuss any of the matters which are embodied in this report? If so, this time is allotted to this discussion.

Mr. Robertson: I move that this association disapprove of that portion of the report with reference to appellate procedure and the amendments proposed with reference thereto.

The motion received a second.

Mr. President: It is moved and seconded that this association disapprove of so much of the report of this commission as is included under the heading "Appellate Procedure" and amendments thereto. Are you ready for the question?

Mr. Robertson: Mr. Chairman, I have felt impelled to burden this association with some views of my own with reference to the proposed change in our appellate procedure. If you look at the report of this committee you will observe they really

are seeking to do away with our statement of facts and substitute in lieu thereof a bill of exceptions and a statement of facts narrative in form and limiting the matters presented to a statement of certification of error, or claimed error, settled by the lower court. I have been practicing in this state since 1889 and during my career as an attorney I have not only been called into the adjoining States of Oregon and Idaho but I have had some occasion to become familiar with the pitfalls that lie in the proposed change submitted by this committee. Now, under the statement of facts that we take up, there is sometimes unnecessary matter than can be, to some extent, eliminated, but to permit the party who is aggrieved at a decision from presenting a prepared statement of error to the lower court is to double the work upon the practitioners of this state. That practice prevails in Idaho, exactly the same practice that is provided here; that is, after your case is tried, instead of submitting the record to the judge who has tried the case to have it settled, the party aggrieved prepares, in the light of his claim, a record absolutely and totally different from the actual facts as proven at the trial. That matter then goes before the trial judge, as this matter is proposed to go before the trial judge. The matter will then be fought out and the trial judge can certify, fail to certify, add to or refuse to certify the facts, and that will make a matter that will take up a large part of the time in the superior courts. Then, when your record goes up to the supreme court you have a limited record, a record that is unsatisfactory to the lower court and to the litigants.

This proposition is a proposition of Mr. Will G. Graves. He has attempted to engraft it in the procedure of this state for the last ten years. He prepared and caused to be passed an act of the legislature that permits bills of exception to be taken now, embodying exactly what is proposed in this amendment. But few lawyers resort to these bills of exception, although they can do so, because they find the entire record, presenting the entire matter, better presents the rights of the

litigants to the upper court. Now, this proposed act is intended to do away with the old statement of facts, absolutely. We have the simplest practice of any state in the Union. While a great mass of testimony may be taken up, under the rules of the supreme court, the particular error must be predicated and assigned in the brief and it is only necessary to read that portion of the record in the supreme court that is necessary to elucidate the point that is presented in the brief.

I believe the proposed act will permit the presentation of a hand-picked record to the supreme court, fixed by the men who have been aggrieved, and that it would be almost impossible for opposing counsel to guard against this kind of a record; therefore I am heartily opposed to this recommendation and I trust this association will support my proposition.

Mr. Bausman: I wish very heartily to concur in the remarks that have been made, and to more clearly put before you the grounds of my objection to this proposed legislation. I will state that sometime ago I myself thought that our appellate procedure in this respect could be improved. I think there is no doubt that it can be improved in certain respects. I have talked, for that matter, with Mr. Graves about it and he set about improving it. However, he proceeded to make the changes at entirely the wrong end. The change which I thought he would propose, and which seems to me desirable, is a change, not in the statement of facts, but in the printing of the records in the supreme court by condensation of that which has been settled as the statement of facts as the statute now exists. The statute, as Mr. Robertson says, is one of the simplest imaginable. The controversies that now arise, under the statement of facts in this state, are exceedingly few. The grievance that was to be remedied was the burdening of the supreme court with what we all admit is often an unnecessary and cumbersome record. Allowing that it was not necessary to devise any new and intricate means of settling what were the facts in the case, but the facts in the case being settled as they now are, to shorten in the supreme court by voluntarily

condensing and printing the record of what they had to consider—upon this I propose no debate. If the person proposing this condensed printed letter should make a false condensation it would be the immediate cause of objection and be corrected by the adversary by printing what was the truth and imposing costs upon the other party. So far as this proposition is concerned, it simply burdens us with new and intricate and statutory matters, all of them involving jurisdictional questions, probably, and you know what that means,—infinite labor and preparation. So I wish to say that, having given this matter a good deal of study, I do not see anything in this but a multiplication of your labor, and I do hope it will not pass.

Mr. Brown: Will Mr. Robertson kindly indicate the section covered by his motion? Do you mean to include any portion of Section 3 in your motion, Mr. Robertson?

Mr. Robertson: I am not addressing myself to anything in this report except that portion that starts out with the statement that "shall be deemed part of the record," sections 4, 5, 6, 7, 8 and 9 of the proposed bill.

Mr. President: The chair understands the motion to disapprove everything embodied in the report under the head of "Appellate Procedure." Is the chair right?

Mr. Robertson: The Act relating to exceptions, bills of exceptions, and records on appeal. I am opposed to that portion in toto, the principal part of which I have referred to.

Mr. Brown: What do you say with reference to the first section there?

Mr. Robertson: The entire bill, Mr. Brown.

Mr. Brown: There is a separate matter in section 1 there.

Mr. Robertson: They all go. In order to make it clear, all under "Appellate Procedure."

Mr. President: You adhere then to your motion as originally made, Mr. Robertson, is that correct? Am I to understand the chair was correct in its interpretation of your original motion that it related to all under the head of "Appellate Procedure?"

Mr. Robertson: I see nothing commendable in the matter at all. It is all included in the bill as proposed.

Mr. Moore: Mr. President and gentlemen of the Bar Association. I have not had the pleasure of practicing in the State of Washington for twenty years or longer, as other gentlemen who have spoken, but I have had the pleasure of practicing law here for a period of ten years and over and in the State of Montana for about twelve years. I will say that this proposed bill follows very closely the practice in the State of Montana, and in ten or twelve years' experience with that practice I must say that I have never encountered any of the evils of which these gentlemen speak so feelingly. If any member here should have talked with the judges of the supreme court of Montana, as I have done, and compared our appellate practice to the practice of that state, he would certainly favor this proposed bill. It simplifies the work of the supreme court, it simplifies the procedure on appeal and last, but not least, it is a saving of considerable cost to the litigant. It may make a little more work, in some instances, for the attorney. It is outrageous to make an appellate court wade through all the testimony, when all the matters necessary for the court to consider or necessary to a decision and determination of the case could possibly be included in ten or fifteen pages in narrative form. I want to say that experienced lawyers who have had actual practice under similar provisions of the law are altogether in favor of this proposed bill. I am not a member of the committee and I have not studied over the matter as they have, but I cannot let this matter go by without saying something in favor of that practice from personal experience.

Mr. President: Is there any further discussion of the matter?

Mr. Hughes: I understood the chair to rule that the motion attacks the entire report on the subject of Appellate Procedure?

Mr. President: That is the understanding of the chair and Mr. Robertson's understanding.

Mr. Hughes: If this motion should carry it would carry

with it condemnation of the suggestions contained in this report, and on the second page of the published report which I hold in my hand, preceding the proposed act?

Mr. President: That is the understanding.

Mr. Hughes: That is what the chair has ruled?

Mr. Brown: Beginning at the title "Appellate Procedure," I understand?

Mr. President: Yes, sir.

Mr. Hughes: I understand the chair to rule that the motion related to the report of the committee under the title "Appellate Procedure?"

Mr. President: As repeatedly declared that is the understanding of the chair, that all the report under the heading "Appellate Procedure" falls under the motion.

Mr. Bausman: With the consent of Mr. Robertson, the mover of the motion, and evidently in harmony with what Mr. Hughes is going to suggest, I suggest that the motion be changed to apply only to that portion of the report as printed beginning: "We recommend that the commission present to the legislature for adoption a bill reading as follows: 'An Act Relating to Exceptions, Bills of Exceptions, and Records on Appeal,' "—that portion be disapproved.

Mr. Robertson: I will accept the amendment.

Mr. President: The motion then is that all that part of the report of the commission under the head of "Appellate Procedure" which begins with the sentence, about the middle of the page, "We recommend that the commission present to the legislature for adoption a bill reading as follows:" be disapproved. Are you ready for the question?

The motion being put to the house was carried.

Mr. President: Embodied in the report which was published is a section under the heading "Civil Code," and it has been announced that Mr. Harold Preston, of Seattle, would present this matter to the association.

Mr. Rummens: May I rise for the purpose of asking a question? Do I understand that the remainder which is offered

under "Appellate Procedure" has been approved by this association?

Mr. President: That has not been acted upon, Mr. Rummens. Will Mr. Preston present that part of the report under the heading "Civil Code."

Mr. Preston: Mr. President and Gentlemen: I first want to get the matter of this report or this subject of discussion before you in its right bearings. Governor Hay appointed a commission or committee of ten or eleven members to consider and possibly draft, a bill looking to some reform in the court procedure of the state. That committee was composed of gentlemen living in different parts of the state, and it was found difficult to get them together, therefore a division of the preliminary work was laid out, having in view geographical lines more than anything else, thinking we might give the gentlemen in Spokane one phase of the subject, the gentlemen in Seattle another and the gentlemen in the Southwest another. Now, those sub-committees were appointed, and this first matter that is in the printed paper before you, is something that was prepared by the sub-committee on the subject, "The Civil Code." It was not prepared for submission to this body. It was not even adopted by the sub-committee. It has never been considered by the commission. It was a way adopted of bringing certain thoughts or ideas before the full commission for discussion.

This first section is a section that I doubt very much if even a majority of this commission favor. I favor it myself, and I have not found many others to agree with me. Some do. When I say I favor it, I do not mean to say that I favor this thing particularly. It is only the expression of the idea, for the purpose of threshing out, to see if this idea, or some other idea that could be put in place of it, would tend to accomplish the reform that seems to be needed. I think, and I believe most of you will agree with me, that we have too much litigation, we have too many cases in the courts. We have too many unmeritorious cases brought. There are too many defenses made, without merit, to meritorious cases, and one rea-

son why we are so free with these things is that it doesn't cost much. Therefore, the thought was: Can some way be devised that will take out of the courts, at the threshhold of the courts, some considerable portion of that class of cases? Now, this is simply the expression of an idea towards that end. Now it was thought, that if a party who was going to bring a case without merit or going to interpose an unmeritorious defense to a meritorious case brought against him, was to realize that, under the law, he had to make the other man whole for delaying him and putting him to that expense, that would be a deterrent. So this idea of a preliminary hearing suggested itself. At that preliminary hearing the court could hear the parties informally and would come to a conclusion, not binding upon the court or any of the parties, that the plaintiff had the merit of the case on his side, and would therefore estimate what it was going to cost that plaintiff against the defense interposed and would say to the defendant, in those cases—eliminate those cases where the defendant was a man who was not financially able to give security, thereby not denying the courts to the poor—say to that man, "You must give security, in some estimated sum stated, to make the plaintiff whole if you make this defense against his action." Now, the idea occurs also, that many cases are brought or defended that would not be if the party in interest had some disinterested advice about it. His own attorney becomes his advocate at once and perhaps encourages him or does not sufficiently discourage him from bringing an unmeritorious case or making an unmeritorious defense; so it was thought probable that with the parties before the court, if the court would talk with them informally and say "The plaintiff does not seem to me to have a good case here," in a considerable number of cases, the litigation would end there. That is all there is to that proposition. I do not know whether many will agree or many disagree. It would be useful to know how it strikes the Bar Association of the state.

The next proposition is an attempt to simplify the proceedings, following, in a general way, quite closely the new En-

glish practice. The idea underlying that, and also underlying the first proposition, is this, that a lawsuit ought to be a simple, a speedy, inexpensive, and informal way of arriving at the truth and the right and justice of any dispute between two parties. The other idea is that a lawsuit is a game of skill, and the goal is won by the most skillful pleader; that is the old idea. So that idea was suggested, following the English practice and doing away with motions to strike and demurrers and letting the answer come in and setting up the demurrer in the answer, if there is ground for demurrer, setting up anything else in the answer going to the sufficiency of the complaint, and at the same time making answer, reserving to the party the right to demur if he wants to stand on his demurrer. It is a quicker way to get at the end and relieves the attorneys of a lot of vexations.

The third is another attempt to simplify some of our practice. We have now three or four—I won't attempt to say how many—divisions of our code addressed to the different ways in which one party to a case can get information from another, and if he files interrogatories the other side usually contends that that is not the proper method. So this simply lets the man who wants information ask for it and it don't make any difference whether he asks for it under one name or the other, he gets it if it is germane to the matter.

The fourth proposition was suggested tentatively, as were all the others, the only object being to try to simplify the trial of the case. We have done away with the motion to strike, the motion to make more definite and certain, and other dilatory motions. There ought to be a time and place fixed where the chaff may be put out of the case, where the formal denials going to matters not of essence may be brushed aside, where the court and counsel, without a jury, can talk those questions over and arrive at what the issue is. The issue is made up for trial, and then it comes to trial.

The fifth we practically have now. "Either party may examine the opposing party under oath at any time prior to trial." We have that, but not quite complete enough. That

is another thought along the same line, that it would be a good thing to get at the truth of a case as quickly and cheaply as possible and try to eliminate from the trial those things that are not at issue.

The sixth one goes with the others, because, if the others were obtained, we are making our judge a more and more responsible party in the trial of cases and in the preparation for trial. We are imposing more power upon him. We ought to make him better able to handle a case, and therefore suggest that the strict constitutional inhibition against a judge commenting on the facts ought to go out and leave our state as other states are in which, without such constitutional provision, the appellate courts guard against any abuse on the part of the judge in the way of commenting on the facts. Other states get along practically as well as we do without such a constitutional provision.

Now, gentlemen, on behalf of the sub-committee that had the temerity to suggest some of these novel ideas, we leave them to your mercy.

Mr. Vance: With respect to that part of the report called the "Civil Code," I move that the thanks of the association be extended to the committee, and that that part of the report be recommitted, with instructions to be burned. With the permission of the chair, and gentlemen, I would like to make a suggestion or two.

While it sounded somewhat frivolous, the motion is one that it is proper to make, and it is preceded by thanks to the committee, showing that no discourtesy is intended. I think that every suggestion in that part of the report is not only of no use but it is vicious. Reduced to its ultimate, it is this: It requires two trials of a case, and, incidentally, probably a change of attorneys, not to speak of possible change of venue under the statute. It simply means that, instead of presenting a case in lawyer-like form in a pleading that is made as tight as the witnesses's imagination will permit under the requirements of the law, that an informal statement may be made and the court that is to determine the merits of the controversy between

the parties will pass an informal opinion, stating that one side or the other will probably prevail in his court. In addition to that informal expression of opinion, it is reinforced by the statement of the court that "I am so much convinced that this side will prevail that I shall require the other side to give bond to keep the peace." Now, that results, probably, in one thing. My client, who has been sufficiently unfortunate as to fix confidence in my opinion, either loses confidence in me—which God forbid—or in the court, which is equally disastrous, from a public point of view. If he thought sufficient of my views to abide by them in the first instance—and if he is an honest man he will think so—he would undoubtedly say, "If the bond be not prohibitive, I will proceed with my cause, but I desire the independent opinion of a judge who has not prejudged my case." If he is convinced that my lack of sufficient eloquence is the ground for his failure, he might employ some more competent attorney to present the matter to the court. Now, it is not a short-cut. I do not mean to say that these gentlemen of the committee are pretentious, because they have the honor of my personal acquaintance and they are distinguished and able lawyers, but it surely will result in two trials.

And so with some of the other provisions. All of them, I think, are objectionable if designed either as short-cuts or as equitable methods of arriving at justice. Take, for instance, the various motions attempted to be done away with here. The same end can be reached, without confusion, by the simple remedy of imposing terms for frivolous motions. It is a very effective remedy. I can say, for the benefit of my younger fellows in the profession, that by the time they have explained to an obstreperous client why he has been compelled to produce twenty-five dollars because the court held a motion to be frivolous, they will tearfully consider the legal effect and substance of all motions before making them. But it is proposed to take away our rights to demur. Why, many of you gentlemen have had the experience that I have had; gone into court, either for plaintiff or defendant, leaving the law questions undeter-

mined until I have marshaled my testimony and prepared for trial. What condition do I find myself in? I may find, no matter how arduous my study may have been and no matter how industrious my client may have been, I may find that, admitting all the facts I have brought to the court to be true, and I have the witnesses to prove them, that it does not constitute a wrong that the law will remedy. I have noticed that the more the law questions are left unsettled prior to the trial the longer your trial takes and if you can have a clear-cut division of the law of the case the speedier your trial is.

Now, in the matter of bills of discovery, the committee says the bill of discovery shall be abolished, and they propose, as a substitute, what? They propose to discover to me something at a time that I don't need it. Will the proposed amendment render less difficult the road to ordinary justice? I think not. I think it is another lion in the path that will permit an unscrupulous practitioner and an unscrupulous client to cover his own case at the same time getting the magazine of the opposition, and it will not clear up the matter at all.

And another thing, and it is a very serious question, and that is the question of the constitutional amendment referring to the power of a trial judge to comment upon the facts to the jury. That is a very serious question and I oppose it very seriously. I think it is a mistake, gentlemen. If the jury system is a failure, let us say so and be done with it, but if the jury system means that they are the judges of the facts proven, I, as one individual with some years of practice, believe that, take it all in all, the average twelve men in the jury box act conscientiously, and, in most instances, they strike the merits of the controversy. I am not going to discuss the jury system. It has its manifold imperfections, but I think those would be increased if you permit His Honor, as president of that court, charged with informing the jury on what the law is, to air his views as an advocate of either side by expressing his opinion upon the facts. I desire to say this in regard to the power in the hands of the court. I think the courts are somewhat responsible themselves but I think the bar is more responsible

for the delays of the court. If the courts did occasionally invoke the rule against these dilatory motions there is no doubt in my mind that this remedy could be achieved without attempting to change the system of jurisprudence, because these so-called amendments to the civil procedure are not, properly speaking, amendments to the civil procedure, but a change and substitution of a new and untried form of procedure. I know of no jurisdiction where a system of arbitrament before the ultimate court is reached, has been adopted, and I know of no jurisdiction where it has been proposed, even in a body of lawyers, other than this, and I suspect that the gentlemen of that committee, for whom I have the highest respect personally and professionally, were more inclined to invite from this association some suggestions as to a way of allaying the condition than to urge the adoption of these revolutionary and untried methods. I think, therefore, the action of the committee should not be simply disapproved but that this report should be re-submitted to them with suggestions along the lines that have developed in the course of this discussion.

Mr. Edge: Gentlemen of the Association: I do not entirely agree with all the remarks of my brother, Vance. I think there is something of good in the suggestions of the committee. At present, so far as my examination has convinced me, I must disapprove of paragraphs one, three, five and six, but I think in paragraph two there is some merit and I think it should be worked out in a practical manner. I believe the code should be changed to abolish motions, bills of particulars and pleadings of that kind. I believe every question of law should be raised at the same time and every motion directed to the answer or to the complaint should be presented at the same time. I think that can be done easily by demurrer, as is generally done in the Idaho practice. Now, I believe, with that exception, that paragraph two is all right; that the pleadings upon the part of the defendant should be the demurrer and answer, or also demurrer on the part of plaintiff to the answer, if so desired. With that exception, I think that the remainder of the report should be re-committed and I am

heartily in favor of that for several reasons. One of the matters touched upon by the president in his address is the law's delay. At the present time the defendant has twenty days within which to appear and interpose any pleadings against the complaint, although he may live next door. He may then come in with a motion of any kind and the matter is delayed for several weeks. The next law day opposing counsel is out of the city; as a matter of courtesy, it goes over. Perhaps the next time, the particular judge before whom the other pleadings were settled is out of the city, and it is commonly two or three months before the pleadings are settled, and that is one of the reasons why litigants criticize the laws and the lawyers, on account of delay. I think provision number six, which permits the court to comment on the facts, is absolutely wrong. I think it practically destroys the right of trial by jury, and I do not think I can say anything in addition to what Mr. Vance has said upon that subject. Paragraph one is in a very crude state at this time. I do not think, upon principle, that it is a good thing, but I do think there should be some reform in the trial court procedure. The appellate court procedure has already received the attention of the association. It is the delay in the lower court, that causes the trouble. I believe by striking out the word "Demurrers" in the second line of the second paragraph, that that paragraph, as then composed, is all right, and I move, as a substitute for brother Vance's motion, that paragraphs one, three, four, five and six be recommitted, and that paragraph two, with that change, be endorsed by the association.

Mr. Howard: Will the gentleman permit a question?

Mr. Edge: Certainly.

Mr. Howard: How would you, in leaving paragraph two in the way you state, reach the question of more specific statement in the pleadings?

Mr. Edge: I suggested extending the grounds of demurrer to include ambiguity, as they do in Idaho. Idaho covers all the grounds of demurrer that we have in Washington, and also includes ambiguity.

Mr. Brown: Mr. President, allow me to make a suggestion in regard to the form of the motion. In its present form it may be said to be discourteous, where no discourtesy is intended, and to place the commission in a wrong light before the association.

Mr. President: Will you permit the chair just a word The chair is bound to rule that the motion to recommit is out of order, this not being a committee appointed by this association, but a commission appointed by the governor of the state. The chair could entertain a motion to approve or disapprove of the report.

Mr. Bausman: Mr. President, I move that the report be disapproved except as to section two, which be reserved for future consideration.

The motion received a second.

Mr. President: It is moved and seconded that the report of the committee be disapproved except as to section two. I will recognize you now, Mr. Brown.

Mr. Brown: That covers the point I desired to make.

Mr. Higgins: Mr. President, it seems to me that the motion should not pass as made. I believe there is a good idea in paragraph four that can be reserved and the objection that has been made to it met at the same time. The only objection that has been urged to the idea included in paragraph three is that it does not enable you to get the information you want at the time you need it, that if you need the information for purpose of answering or, perhaps, replying to the answer, it comes too late, because it postpones the time when you can make your demand for information until after issue is joined. I do not see how any real objection can be urged to the idea of cutting out the three methods we have at the present time of obtaining information which one side may want from the other. It seems to me that one demand for information should be sufficient to get you any information you wanted, and the suggestion contained in paragraph three can be made to perform a very useful function, and there can be no objection to it, if you strike out the words "after issue joined." I think

the motion should be amended so as to exclude from the portion of this report disapproved that portion contained in paragraph three provided there be stricken from that paragraph the words "after issue joined," and I make that motion.

Mr. Robertson: Mr. Chairman, pardon me again for trespassing upon the time of this body, but I have practiced a great deal in Idaho. Now this demurrer in Idaho is sometimes eight or ten pages long. It is the most ridiculous procedure I have ever heard of. Instead of presenting a clear-cut question of law, as we do, they start in and say: "The complaint is ambiguous and uncertain and meaningless and scandalous, in this:" and then they repeat the complaint. Now, we have a way whereby we can present to the court a motion for bill of particulars or to make the complaint more definite and certain. We are required to point out, in that motion, wherein the complaint is ambiguous, but in Idaho they either point it out or not in the demurrer as they see fit. The result is that neither the courts nor opposing counsel are informed as to what is sought to be elucidated or question established. Many times we are willing to confess and give the bill of particulars or make the complaint more definite and certain, and I understand that the supreme court of the state have provided that when a motion of this kind is interposed the time is only extended three days, therefore it brings the issue, under these present pleadings, even more quickly than it will by the proposed pleadings of the Idaho practice, which I consider, and many lawyers of Idaho consider, cumbersome.

Like Mr. Vance, I see no benefit in any of this proposed procedure, and, for that reason, move that that portion of the report beginning at the "Civil Code" and ending on page two with "An amendment to the constitution to be prepared and submitted with the report, abolishing the inhibition of comment on the facts by court to jury,"—I move that we disapprove the recommendation of this commission that the civil code be amended as set forth in the tentative proposition; I move that as a substitute for the various motions.

The substitute motion received a second.

Mr. President: It has been moved and seconded as a substitute for the motion which was previously stated to the body, that the entire report under the head of "Civil Code" be disapproved. Are you ready for the question upon the substitute?

Mr. Moore: Mr. President, Gentlemen of the Bar association: I want to say on the start, that I do not agree and did not agree with Mr. Harold Preston in his statement that we had too much litigation. The only thing I am prepared to say is that I do not get enough of it. I want to say this, that the bar is noted for its conservatism. At present the legal fraternity for that very reason is in bad repute over these United States. If the matter was submitted to a referendum of the people of our own United States, I think they would vote, by an overwhelming majority, to abolish the legal fraternity. There is a great cry going up all over the country for a reform in legal procedure. Now, the question is right squarely up to us whether we are going to guide that sentiment into safe channels or sit back and try to stem its tide. I do not think we approach this matter in the right way. I do not suppose there is one person in ten in this audience who has given sufficient study to these propositions contained in this "Civil Code" to pass an intelligent opinion upon them. I have not. I cannot pass upon matters involving the most momentous questions that have ever been presented to the bar of this state—I cannot decide them upon an ex-parte hearing and upon one or two speeches. I think we ought to give long and careful consideration to every proposition presented by this commission. They are gentlemen of the highest standing in the bar of this state. If we cannot give it careful, judicial consideration by paragraphs, each proposition, we should not act upon it at all. Therefore, Mr. President, I am going to move that we segregate these different recommendations and take them up paragraph by paragraph.

Mr. Robertson: I rise to a point of order. There is a motion before the house.

Mr. President: The chair sustains the point of order.

Mr. Hughes: Mr. President, I do not like this occasion to

go by without saying one word about the sixth proposition. I have long been of the opinion that the inhibition of our constitution which prevents the court from making any comment upon the facts is a mistake. In other words, I am convinced that proper comment by the court upon the facts will always aid a jury in arriving quickly and correctly at a proper conclusion of the cause. I quite agree that the court should not comment upon the weight or value of the testimony. I think a court should never do that, but I do believe that courts cannot as clearly instruct a jury where they have to guard themselves, as they do under our constitution, against any comment upon the facts. I think if our constitution were amended so as to eliminate that inhibition against making any comment upon the facts, but including a prohibition against commenting upon the weight and value of the testimony, it would greatly advance the ends of justice. I am confident the court would not usurp the function of the jury or try to sway or influence them in the ultimate determination of the question of fact, but that the court can aid the jury if it is permitted to apply the law concretely and particularly to the particular facts which the jury is to try out and determine. I think we all appreciate the difficulty that the courts have in giving to the jury the law that is applicable to the particular fact in controversy so that the jury can understand what the law is as applied to the cause, and that they often make their instructions ambiguous because of that fact. I think there is every reason why the court should be free to apply the law to the particular facts in controversy without the fear of being reversed because of an instruction which may be considered as a comment on the facts, if he is restrained from commenting on the weight and value of the testimony given.

Judge Hoyt: I rise for inquiry. We have a committee on reform of judicial procedure, a standing committee of this association?

Mr. President: We have.

Judge Hoyt: I move you that this whole subject matter be referred to that committee, to be reported upon at the next

annual session of this association. I believe it is too important a matter to express even an opinion upon until each of us have had opportunity to give it consideration.

The motion received a second.

Mr. Rinehart: We can see that it is evident that there are good suggestions in this report, but we have forgotten the fact that this is not a report to this body. This commission is not reporting to us, and I think, in addition to Judge Hoyt's motion, that we should, through our secretary, thank this commission for bringing this matter to our attention and express to them our opinion that they are attempting to arrive at something of good and that we approve of many of the views that are there presented, and that our committee be asked to cooperate with them and suggest such things as our committee may think proper, and not be discourteous enough to act, as we are attempting now to act, in disapproving this report. I wish to second Judge Hoyt's motion with the amendment that we, in some courteous language, express our commendation of what the committee are attempting to do.

Mr. Terhune: I rise to a point of order.

Mr. President: The motion by Judge Hoyt is out of order. The original motion was to disapprove. That motion was amended by Mr. Higgins. There was a motion made to substitute for the original motion with the amendment—

Judge Hoyt: Cannot it all be referred? Is not the motion to refer to a standing committee a privileged motion?

Mr. President: The chair is inclined to think, upon consideration of the suggestion of Judge Hoyt, that he is right and the chair is, as usual, wrong. Judge Hoyt's motion is held to be in order.

The question, therefore, is upon the motion to refer the report of the commission to our committee upon judiciary and judicial administration. Are you ready now to vote?

The motion is put to the house, and, upon division of the house, the motion to refer is declared lost.

Mr. President: The question now recurs upon the substitute offered by Mr. Robertson, the substitute being in effect

that all the matters reported by the committee under the head of "Civil Code" be disapproved.

Will the mover of the substitute correct the chair if the chair is wrong in stating that the substitute was that all the report under the head of "Civil Code," with the exception of section two, be disapproved.

Mr. Robertson: No, including the section. I said all of it, including section six, be disapproved. I included section six particularly. That is all of it.

Mr. President: The motion, then, is that all the report of the commission under the head of "Civil Code" be disapproved. Are you ready to vote upon the question?

The motion is put, and, upon division of the house, is declared carried.

Mr. President: The next matter upon the program is the report of the committee on Legal Education and Admission to the Bar, John T. Condon, chairman.

Mr. Howard: I rise to a point of order. I call attention to the fact that that portion of the report of the commission under "Appellate Procedure," down to the proposed act, has not been passed upon or submitted.

Mr. President: I think, perhaps, Mr. Howard, you are right, and it is also a fact that that part of the committee's report under the head of "Probate Code" has not been passed upon. The chair will withdraw its suggestion that Mr. Condon submit his report now, and I will ask Mr. Bridges to submit the matter of the amendment of the probate code to the association.

Mr. Bridges: Mr. President and Gentlemen: It is very difficult for this sub-committee to make any report that is comprehensive. It is the desire of the sub-committee to re-write the whole probate law, making many minor changes. I have a written report covering some of the more important features, and I will read that instead of speaking otherwise.

REPORT OF SUB-COMMITTEE ON PROBATE LAW.

The undersigned sub-committee on Probate Law, intends reporting

to the whole committee appointed by the governor on simplification of the laws of the state, substantially as follows:

The probate law of this state as it now exists, is made up of many acts passed by state legislatures during the past thirty or forty years. It is therefore badly in need of being rewritten as one act covering the whole subject. By so doing the law can be made much shorter and more simple.

It is our intention to recommend among others the following material changes of the present probate law:

(1) There should be cut out of the present law many of the arbitrary directions binding the court, and the law should be so written as to give the court a much broader discretion than it now has. We believe it is unsatisfactory to have a complete set of fixed and arbitrary rules to apply to the varying facts and conditions of each estate. Each estate should be settled in a business-like manner and so to do, the court should not be bound by arbitrary laws, but should be given a wide discretion.

(2) We propose to report that claims against the estate must be presented within a much shorter time than as at present—say within four months after first publication and not one year as the law now provides; all to the end that each estate may be more quickly settled.

(3) We propose to report that if it is necessary to sell or mortgage property to pay debts, it shall be discretionary with the court whether he will sell real or personal property; to the end that in proper instances the real estate may be sold and the personal property preserved for the heirs, thus modifying the present law which compels the sale first of all personal property.

(4) We propose to report such modification of the present law, as that the validity of the sale of real or personal property shall not rest on jurisdictional allegation in the petition for sale or otherwise, but that when a sale is confirmed by the court, that act will in itself validate such sale. Property of estates is now sacrificed at sales, because of the fear of intending purchasers that some irregularity in the proceedings may invalidate the sale.

(5) We propose to report that when the surviving husband or wife or parent petitions the court for appointment of an administrator or guardian, the court, in its discretion, may make such appointment without notice of the application.

(6) Some attorneys have requested a provision for a public administrator, but as yet, we have not been convinced that such a provision would be wise.

(7) It is the intention to report for many minor changes in the present law, all with the view of expediting the settling of estates,

but they are too many and separately too unimportant, to mention in this report.

It is not the intention to report any radical change of the present law, as a whole, but to report several radical changes of certain provisions of the present law.

Respectfully submitted,

J. B. BRIDGES,
J. C. HOGAN.

Mr. President: What is the pleasure of the association with regard to this report?

Moved and seconded that the report be approved.

Mr. Howard: I think there is one amendment should be made, and that is in the period of publication. It is suggested that it should be changed from one year to four months. Very frequently there are inconspicuous people who die and are not heard of within four months. I do not want to make a motion, but I think the committee ought to be asked if they do not want to change that.

Mr. Nash: As I understand it now, there is no law under which a guardian of a minor can mortgage the estate. That has been drawn very forcibly to my attention recently by application that was made from my office. Some provision should be made under which, upon application to the court, the real estate of minors under guardianship can be mortgaged. There is already provision made for the mortgaging of the estate of an insane person by guardian but no provision for mortgaging by the guardian of minors.

Mr. Rummens: Addressing myself to the last proposition made by the gentleman, I want to say that, within the last two years, other lawyers in Seattle and myself have had a proposition like this: We have a piece of vacant property, estimated to be fairly worth about two hundred thousand dollars. It has absolutely no income, and it costs, in taxes and assessments, about six thousand dollars a year to keep it, and the minors have no money and cannot mortgage it. I would be a sacrifice to sell it at this time, because the highest offer we have secured

is one hundred thousand dollars. I think a provision should be embodied in the probate procedure so that the guardian of minors should have authority to mortgage the real estate of his wards.

Mr. Terhune: It seems to me that one of those suggestions is too sweeping and too general for this association to approve at this time without some more specific consideration of detail. It changes the law completely and recommends that more discretion be given the courts in certain matters, but it don't say what or anything. It seems to me that it is too sweeping and too important a matter to be taken up by the body at this time without some discussion.

Mr. President: The question is upon the adoption of the report as presented.

Judge Bell: I would amend that motion by suggesting that the specific recommendations be approved by this body and not the general suggestions. My idea is that this motion be amended. I move that this motion be amended by inserting the words "specific recommendations" be approved by this body.

The amendment received a second.

Mr. President: The amendment is that the specific recommendations contained in the report presented by Mr. Bridges be approved. The adoption of this motion will dispose of the report.

The motion is put to the house.

Mr. President: The motion is carried, which disposes of the report. That portion of the report of the commission under the head of "Appellate Procedure" down to that portion which was disapproved by previous vote of the association, has not been acted upon.

Mr. Secretary: Mr. President, I am inclined to think that one member of the sub-committee, Mr. Merritt, likely will be here. I was told that he would be here, and I move at this time that action on that portion of it be deferred until tomorrow, under the head of Miscellaneous Business and be a special order at that time.

The motion received a second, was put and carried.

Mr. President: The next matter on the program is the report of the committee on Legal Education and Admission to the Bar, Mr. John T. Condon, chairman.

Mr. Condon: Mr. President, it will take but a moment to present my report. I have not been able to reach and consult with every member of the committee, but, after consultation with those members that I have met, it has been decided to report that we make no recommendations for new legislation for admission to the bar for the next meeting of the legislature, in view of the fact that we are not ripe, probably, in this state, for the adoption of the act that was approved by the American Bar Association. That involves the taking of step in advance which we are not yet ready to take. So that our recommendation at this time is that we take no action towards changing legislation with reference to admission to the bar for the next legislature. I submit that as our report and move its adoption.

The motion received a second, was put and carried.

Mr. President: The next matter is the report of the committee on Judiciary and Judicial Administration, Mr. E. C. Hughes, of Seattle, chairman.

Mr. Hughes: Our committee feels that, in view of the public interest and the attitude of the present administration as affecting the judiciary and the judicial recall, we should not make any report at this time, and considering the manner in which the association has received the report of the Committee on Judicial Procedure, the committee would not have the temerity to make any suggestion on that subject.

Upon motion, the report of the committee was adopted.

Mr. President: Next is the report of the committee on Amendment of Laws, Mr. Charles E. Shepard, of Seattle, chairman.

Mr. Shepard: Mr. President, if this committee had known in advance what was going to happen to the report of the Com mission on Amendment of Law appointed by Governor Hay, it would have retained Judge Robertson and General Vance, but, as it is, it has not been able to do so and it, therefore, must take its chances. Such as it is, I will read the report.

REPORT OF COMMITTEE ON AMENDMENT OF THE LAW.

To the Washington State Bar Association:

Your Committee respectfully reports than on account of the distance of the residences of the members from each other it has not been able to hold a meeting of the full Committee, but the general subject of proposing amendments to the law has been under consideration. The Committee has felt that perhaps its functions were largely superseded for the time being by the Commission appointed by Governor Hay for reform of judicial procedure, and has therefore not given as much consideration to the general subject as it otherwise would have done. That Commission has proposed important changes in the law, which have been laid before the Association and with much of which this Committee agrees. There are, however, a number of points not covered by the work of that Commission so far as it has yet been made public, and this Committee therefore submits the proposed amendments to the law which are hereinafter set forth:

I.

One of the most important subjects in which we believe improvement can be made is the matter of dismissal of appeals on technical grounds and rulings in litigation on technical grounds not affecting the merits of the case. Since this state was admitted very many appeals have been dismissed upon ground of defects in the service of notice on all parties, or in the terms of the bond, or in other matters which could easily have been cured, but the Supreme Court has felt constrained even since the passage of Section 1734 of Remington & Ballinger's Codes, to construe the law as peremptorily requiring the dismissal on the ground of loss of jurisdiction. One of the most striking instances of this stringency of practice, which has resulted probably in an enormous loss to deserving litigants, has been the ruling on the point of filing a statement of facts or other paper first or serving it first. Your Committee, therefore, proposes the following:

An Act Relating to Practice in the Superior and Supreme Court.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. In any action, proceeding, writ or appeal in any court, where any statute or rule of court requires any paper to be both served and filed, the service and the filing thereof shall be equally valid, whichever act precedes the other.

SEC. 2. Whenever a motion shall be made to dismiss any appeal, writ or other proceeding in the Supreme Court for any cause except that the notice of appeal was not served, writ applied for or proceeding begun with the time limited by law, the motion shall be denied

if the appellant or party initiating the writ or proceeding shall within ten days after service of the motion take the proper steps to correct the defect or error in the appeal, writ or proceeding, provided that due service had been made in due time on any one respondent.

SEC. 3. This statute is remedial and shall be liberally construed, and the rule of *ejusdem generis* shall not apply.

II.

Another subject of great importance and which has engaged the attention of the American Bar association and various other bar associations throughout the Union for some years past is that of preventing unnecessary delay and cost of litigation by reversal on grounds not of technicalities in practice but of technicalities or strictness of ruling in regard to admissions of evidence or instructions to jury. On that subject the following is proposed and is very similar to a bill now before Congress:

An Act Relating to New Trials.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. No judgment shall be set aside, or reversed, or new trial granted by any court in any case, civil or criminal, on the ground of misdirection of the jury of the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken for review shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its decision upon such point reserved may require.

SEC. 2. The trial judge shall also in any case, on request of either party, instruct the jury to render, besides its general verdict, a special verdict stating the essential facts, or to answer special interrogatories submitted to it; and in any conflict or inconsistency between the special verdict or the answers to special interrogatories rendered by the jury, and its general verdict, the special verdict or answers shall prevail over the general verdict.

III.

The committee have also had under consideration two important subjects relating to substantive law, to-wit, the administration of com-

munity property and the recovery of damages for the death of persons caused by wrongful act or neglect, and it submits the following to cure what it believes to be defects in the law as it stands at present:

An Act Providing for the Administration of Community Property.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That upon the death of either member of a community the survivor shall have the exclusive right to administer the entire community estate.

SEC. 2. That should the survivor fail to apply for Letters of Administration in the proper probate court within forty days after the death of the spouse, then the executor named in any will of the deceased member of the community shall have the right to administer the entire estate of the decedent including the community property.

An Act Amending Section 4828 of Ballinger's Annotated Codes and Statutes of the State of Washington, in Relation to Recovery for Damages for the Death of a Person Caused by a Wrongful Act or Neglect of Another, as Such Section Is Amended by an Act Amending Section 4828 of Ballinger's Annotated Codes and Statutes of the State of Washington in Relation to Recovery for Damages for the death of a Person Caused by a Wrongful Act or Neglect of Another, Approved March 13, 1909.

Be it enacted by the Legislature of the State of Washington:

SECTION 1 . That section 4828 of Bellinger's Annotated Codes and Statutes of the State of Washington, as amended by an act amending section 4828 of Ballinger's Annotated Codes and Statutes of the State of Washington in relation to recovery of damages for the death of a person caused by a wrongful act or neglect of another, approved March 13, 1909, be, and the same is hereby, amended to read as follows:

"SECTION 4828: When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death. When the deceased is a man and leaves a widow, or widow and children, (they shall be considered for the purposes of this act as his heirs, and when the deceased is a woman, the widower and his children), or child and children, if no widower shall be considered for the purposes of this act as her heirs, and such heirs or personal representatives may maintain an action for damages against the person causing the death. If the deceased be a man and leave no widow or issue, then his parents, sisters, or minor brothers who may be dependent upon him for support, and who are resident within the United States at the time of his death, may maintain said action, and if the deceased be a woman and leave no widower or issue, then her parents, sisters, or minor brothers who may be dependent upon her for sup-

port, and who are resident within the United States at the time of her death, may maintain said action. If the deceased has no heirs, his personal representatives may maintain the action for the benefit of his creditors.

"When the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square or wharf, his or her heirs, or personal representatives, or, if the deceased be a man and leaves no widow or issue, or if a woman, no widower or issue, then his or her parents, sisters, or minor brothers who may be dependent upon him or her for support and who are residents within the United States at the time of his or her death, may maintain an action for damages against the person whose duty it was at the time of the injury to have kept in repair such sidewalk or other place.

"The widow, or widow and her children, or child or children, if no widow, of a man killed in a duel shall have a right of action against the person killing him and against the seconds and all aiders and abetters. In every such event the jury may give such damages as under all the circumstances of the case may to them seem just."

IV.

Another important subject in which there is a defect in the law as it now is, is that of the power of guardians to mortgage property of their wards in order to prevent the sacrifice of property. The following proposed act will remedy this defect:

An Act Amending Sections 1645, 1646, 1647, 1648, 1649 and 1650 of Remington & Ballinger's Annotated Code and Statutes of Washington, relating to the estate of minors.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 1645 of Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1645. Whenever necessary for the education or support or payment of just debts of any minor or for the discharge of any lien on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, or whenever the court shall for any cause or any purpose deem it beneficial to the estate of said minor, the court may on application of the guardian order the same, or any part thereof, to be sold or mortgaged and may authorize the guardian to borrow money upon such mortgage. Such mortgage shall be for such amount and for such time and on such terms and at such rate of interest as the court may order. In construing this section the rule of *Ejusdem generis* shall not apply."

SEC. 2. That section 1646 of Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1646. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.

2. The disposition made of such personal estate.

3. The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

4. The annual value of the real estate of the ward.

5. The amount of rent received and the application thereof.

6. The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

8. Statement of the facts which give rise to the need for the money which is sought to be borrowed together with the purposes to which the money is to be devoted in case the right to mortgage is prayed for.

9. The age of the ward, where and with whom residing.

10. All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application."

SEC. 3. That section 1647 of Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1647. If it shall appear to the court from such petition and from the hearing thereon that it is necessary or would be beneficial to the ward or to the estate of said minor that such real estate or some part thereof should be sold or that money be borrowed for the use and benefit of said estate and that a mortgage be executed to secure the payment of the money so borrowed, together with interests and costs, the court may authorize the said guardian to sell part or all of the real estate or to borrow money and mortgage the land on the same terms and notice required for sales or mortgages of real estate by executors and administrators, and in case the borrowing of money and the execution of a mortgage is directed then the court shall in its order direct to what purpose the money authorized to be borrowed shall be used."

SEC. 4. That section 1648 Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1648. All of the provisions of the chapter relating to sales and mortgages by executors and administrators shall be applicable to sales and mortgages made by guardian, except as otherwise herein expressly provided."

SEC. 5. That section 1649 of Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1649. Within thirty days after such sale or mortgage such guardian shall make a report thereof to the court and in case of sale produce the proceeds of such sale and the notes or obligations or other security taken to secure the payment of the purchase money, and in case of mortgaging shall produce the proceeds of such mortgage, together with the notes or other evidence of indebtedness and mortgage to the court."

SEC. 6. That section 1650 of Remington & Ballinger's Annotated Codes and Statutes of Washington be amended to read as follows:

"SEC. 1650. The court in confirming such sale and directing a conveyance shall be governed by the law regulating the confirming of sales of real estate made by executors and administrators and the making of conveyances on such sales, and in case of a mortgage the court in confirming such mortgage and directing its execution shall, so far as the same may be applicable, be governed by the law relating to mortgaging real estate by executors and administrators."

V.

It is becoming almost a necessity for the proper conduct of trials in the more populous counties to have a good law library available at the court house for the use of the Bench and the Bar. We therefore propose the following as a means of procuring libraries for counties of the first class:

An Act Providing for the Collection of Fees by the Clerk of the Superior Court, and for the Establishment and Maintenance of Law Libraries in Counties of the First Class.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That in each county of the first class the plaintiff, or other party instituting any civil action or proceeding, shall pay when the case is entered in the superior court, or when the first paper is filed therein, in addition to the fee now provided by law, the sum of $1.00, and the defendant or other adverse party or any one or more of several defendants or other adverse parties or intervenors appearing separately from the other, shall pay when his or their appearance is

entered in the case, or when his or their first appearance is filed therein, in addition to the fee now provided by law, the sum of 50 cents.

SEC. 2. The clerk of the superior court of such county shall deposit all sums of money collected pursuant to this act in a fund to be known as the *"Library Fund,"* and shall pay the same out only on the order of the judges of the superior court for such county, or of a majority of them.

SEC. 3. The money to be derived pursuant to this act shall be expended by the judges of the superior court for such county for the purpose of establishing, purchasing and maintaining a law library in their respective counties.

SEC. 4. Said judges or a majority of them in each county shall have the sole control and management of such law library, and may employ a librarian and assistants for its custody, care and maintenance, direct the purchase and repair of books and make rules for their use.

All of which is respectfully submitted.

July 31, 1912.

CHARLES E. SHEPARD,
WILMON TUCKER,
WALTER CHRISTIAN,
J. W. ROMAINE,
F. M. DEWART,
Committee.

Mr. Robertson: Mr. Chairman, contrary to expectations, I think the report is excellent. I would like to suggest one amendment to the report. Where young men, starting out in life, are engaged in small business and die or are killed through the negligence of others and have no kin, frequently they owe tradesmen, doctors and others in the community—sometimes lawyers—small amounts of money, and I think that if the provision of the statute is going to be extended to include other than parents and children and assist immediate relatives, that that particular fund, where there are no dependents, ought to be extended so that it can be reached by bona fide creditors, not to exceed, say, the sum of twenty-five hundred dollars. I think it is for the protection of the people of the state that that statute be so broadened, and, with the permission of Mr. Shepard, I move that as an amendment.

Mr. Shepard: For myself, personally, and I believe the others members of the committee, we accept the amendment.

Chairman Arthur: Unless they object, the amendment will be considered as a part of the report.

Mr. Hughes: I would like to ask the chairman of the committee one question. Does this bill which provides for the recovery of damages to the estate of a deceased person, caused by the wrongful act of another, permit a surviving husband to recover for the wrongful death of his wife?

Mr. Shepard: Either way; and with or without children or other relative, if leaving no kin.

Mr. Bronson: I think, before we pass upon such a report as that, we ought to have the report read.

Mr. Brown: Let me suggest, for the benefit of the members, that amendments to substantive laws as important as these ought to come not only before those members who are able to attend this meeting, but before all members of the association, and, before action is taken, the report should be printed, and that the members of the association throughout the state be requested to communicate their views to the committee, and that then the committee have authority to act when the legislature convenes.

Mr. Bronson: Do you make that as a motion?

Mr. Brown: I make that as a motion, that this report be printed in the published proceedings of this meeting. I move that this report be accepted, printed in the proceedings and the members requested by the president to furnish suggestions to the committee on amendment of laws, and that the subjects referred to in the report be committed to this committee to act upon when the legislature convenes.

Mr. Bronson: I second it.

Mr. Tucker: I am not in favor of such a motion. There never will be a time when you will get all the members of the bar to approve or disapprove or submit suggestions to this committee. As a member of this committee that made this report, I am in favor of having it acted upon, favorably or unfavorably, at the present time by this body of men here

assembled, which is as representative a body of men as this association has had together for a long time. As I understand, Judge Brown's motion is not to approve this at this time but to leave it for some other time. Now, I cannot conceive what there could be in the report that Judge Brown would want to investigate unless it might be that subdivision of the report which proposes to modify the law relating to the recovery of damages for death by wrongful act. The main portion of that bill, as proposed, grants to the husband the right to recover for the death of his wife; that is, in substance, practically all there is in the bill. To deny a husband a right to recover for the death of his wife, it seems to me, is barbarous and it is something that should be remedied. As it now stands a man's wife is worth as much to him as his ass, or his dog, and in case of her death by wrongful act he can only recover funeral expenses. That is the main evil we propose to amend. If Judge Brown takes exception to the amendment proposed, or legislation looking toward that end, as proposed by the committee, it seems to me it is a matter we should thresh out now.

Mr. Brown: We do not know what it is yet, except the members of the committee, Mr. President.

Mr. Secretary: I would suggest, Mr. Chairman, that this report should be printed and turned over to you for discussion tomorrow forenoon.

Mr. Brown: I think it is a good suggestion, and I will withdraw the motion.

Mr. Chairman: If Judge Brown will recall the referendum motion, it may go over until tomorrow and come up under miscellaneous business.

Mr. Howard: I move, Mr. Chairman, that this matter be made a special order of business for two-thirty p. m., and that the secretary of the association be instructed to have this report printed and in this room tomorrow morning for distribution to the members of the association.

The motion received a second.

Mr. Chairman: The chairman would like to ask the secretary if that is practicable.

Mr. Secretary: Yes, sir.

Mr. Chairman: Very well, then.

The motion was put, and carried.

Mr. Chairman: The next matter to come before the association is "How the Constitutionality of Statutes should be Determined," by Judge Black, of Everett.

Mr. Black: I have taken, probably, a different wording for the title of the paper, which I shall read: "Should the Constitutionality of Statutes be Determined before the Law goes into Effect?"

(For Judge Black's address, see Appendix).

Mr. Hughes: I desire to offer a resolution, which I will pass to the secretary to read.

The resolution is read by the secretary, as follows:

WHEREAS, Hon. Cornelius H. Hanford, a member of this association, has lately tendered his resignation as Judge of the United States District Court for the Western District of Washington, a position which he has occupied with honor and credit to the nation for a period of approximately a quarter of a century;

***Now, therefore, be it resolved,* That we express our regret that the nation shall lose so valuable and conscientious a servant, and express our appreciation of the earnest work which has been performed by Judge Hanford while he has been upon the federal bench.**

Mr. Secretary: Mr. President, I move the adoption of the resolution.

The motion received a second.

President Dovell: Gentlemen, the question is upon the adoption of the resolution which has been read. Are you ready for the question? I recognize Judge Arthur.

Mr. Arthur: I suggest that it be by standing vote.

Mr. Vance moved that the resolution be laid upon the table and urged that it would be untimely and improper to take any action upon such a resolution pending the conclusion of the congressional enquiry.

Mr. Ludington seconded the motion and suggested a point of order as to impropriety of acting upon the resolution at this time rather than under the head of miscellaneous. The point

of order was overruled and upon a vote being taken the motion to lay the resolution upon the table was lost.

Mr. President: The next matter upon the program is the report of the Committee on Uniform State Laws, Attorney General Tanner, chairman.

REPORT OF COMMITTEE ON UNIFORM STATE LAWS.

We, your Committee on Uniform State Law, respectfully reports as follows:

Since the last annual meeting of the Association, the 21st annual conference of Commissioners on Uniform State Laws was held in the City of Boston from August 23rd, to August 28th, 1911, when were present commissioners from thirty-one states and the District of Columbia and where this state was represented by Mr. Charles E. Shepard, one of the commissioners from the State of Washington.

That conference finally completed consideration of two uniform laws, one the Uniform Child Labor Law and the other the Uniform Marriage and Marriage License Law. The national conference on uniform state laws has now finally completed the following laws: The Negotiable Instruments Law; the Warehouse Receipts Act; the Sales Act; the Divorce Act; the Stock Transfer Act; the Bills of Lading Act; the Wills Act; the Family Desertion Act; the Marriage and Marriage License Act; the Child Labor Act.

Only two of these acts have been adopted by the legislature of this state, namely, the Negotiable Instruments Act and the Wills Act.

We commend the other acts named to the careful consideration of the members of this Association.

W. V. TANNER, *Chairman.*

On motion the report was adopted.

Mr. President: The judges of the superior court will meet in this room at nine o'clock tomorrow morning. Tonight, at eight o'clock, the association will convene at the Masonic Temple, which is on St. Helen's avenue, and, as I am advised, one block north from Ninth street, and it is not unlikely that the balance of the meetings of the association will be held at that hall, as I understand the acoustics of the hall are much better than here.

The program announced for the afternoon having been finished, a motion to adjourn is in order.

The association adjourned until eight o'clock p. m.

EVENING SESSION.

Masonic Temple, July 31, 1912, 8. P. M

Mr. President: We will be in order. The first matter upon the program this evening is "A Discussion of the Initiative and Referendum, and Kindred Subjects."

We have intended that tonight's meeting shall be an open forum. You are not only welcome, but we invite you to take part in the discussion.

You will now listen to Honorable W. C. Bristol, of Portland, Oregon.

Mr. Bristol: Mr. President, and Gentlemen of the State Bar Association of the State of Washington, ladies and gentlemen: The honor is appreciated of being called upon to say anything before your distinguished body, and were it not for the fact that we think you are already very well advised of our experiences in Oregon, some apology might be due to you for appearing here at all. If it were not, also, for the fact that your distinguished president and his accompanying secretary insisted upon the discussion of this very much mooted subject, it would be approached with a very great degree of timidity, but, in view of the fact that, on a pleasant evening like this, in the City of Tacoma, and after having had a very interesting session during the day, so many of you have turned out, naturally it is a compliment to be able to talk to you upon the subject. At the request of Mr. Shaffer, the remarks which will be made to you this evening have been placed in manuscript form in order that you may have them to refer to at a later date, if desired.

Primarily, it may interest you to know that the entire system of the initiative and referendum sprang to life in the little empire of Switzerland, more or less frequently referred to as a republic, and in that little, peculiar community, surrounded by the Alps, there are a majority of the people who have, for their occupations, the most simple pastoral pursuits; in fact there is nothing that approaches the complexity of our na-

tional life, and, in that far-off country, in the various cantons composing it, was initiated a method by which the people should express their choice of the manner of government. It would, perhaps, be altogether uninteresting, and at least undesirable, to say to you, familiar as you are with the Constitution of the United States and of the several states, that declarations in that country simply do what is done in our own, reserve to the people all powers not otherwise delegated. Upon that as a foundation, those who have had particular theories and dreams, those who have believed that every time you had a tooth-ache or the gout you should run to the law-making power in order to have the particular remedy applied, found a system in Switzerland which they have engrafted upon some of the states of the Union. Unfortunately the speaker stands before you as an accepted citizen, perhaps not in very good standing in his own state, to apologize for the fact that upon many of the United States has been engrafted one of the most nefarious policies of government that ever any community of people were required to become slaves under.

(For Mr. Bristol's address, see Appendix).

Mr. President: The next matter upon the program this evening is a discussion upon "The Recall of Judges," by Judge Frederick V. Brown, of Seattle.

(For address of Judge Brown see Appendix).

Mr. President: It was intended tonight to have a discussion of the subjects of the initiative and referendum and the recall of judges. The initiative and referendum was presented by Mr. Bristol, and we cannot help but conclude that he was opposed to the measure. The recall of judges was presented by Judge Brown, and we cannot reach any other conclusion except that he is opposed to the recall. It has been arranged that the affirmative of each of these propositions should be presented by Mr. Govnor Teats. Is Mr. Teats present? If he is not, any other member of the association will be at liberty to present his views upon the subject. Does any member of the association desire to discuss the matter?

Mr. Robertson: Mr. President, I am afraid that I cannot

permit the two speeches that have been made to go by unchallenged. I disagree with the propositions of both of the gentlemen. I believe in the initiative and referendum and recall. I see no reason why they should not apply to all elective officers if they are to apply to any. Before, however, I make any extended remarks upon the general question of the initiative, referendum and recall, I am compelled to make a few remarks in defense of the Supreme Court of the state. Two of our most eminent members of the bar, our President and the distinguished representative of the Great Northern Railroad (Judge Brown), have seemed to think that the decision of this court upholding the workmen's compensation act is an innovation, and amounts to the taking of property without due process of law. Now, I believe that the complex businesses of this country have taken away from the ordinary workingman the opportunity to protect himself. He is so absolutely reliant for his daily bread upon a position that is either given to him or withheld by the employer that he walks to his position each day totally dependent upon the place to which he shall be assigned by the will of his employer. I believe, especially with reference to businesses where human life is at stake and men may be maimed and crippled for life, that it is within the power of the state, to provide that a reasonable fund shall be provided by those engaged in dangerous business to take care of the maimed and crippled that meet injury at their hands. I do not think our present compensation act goes far enough. I believe that a proper construction of that provision of the federal constitution that provides that the obligation of contracts shall not be impaired has no reference to the contract of that individual who is required to earn his bread by the sweat of his brow and who must yield up his opportunity to protect himself to the great, complex corporation that uses him. And I believe it is only a question of time when the minimum wage scale will be accepted and adopted by every public service corporation in every state in this Union for the protection of the individual. Now, our Supreme Court having decided it is within one of the powers of the state to enact

such a law, why is it that counsel, able men, now say that the Supreme Court of this state should be criticized for such decision? I say it is the obligation of the lawyers of this state to uphold them and stand by them and give to the public the understanding that they have, in the light of modern procedure, attempted to protect the individual and to place the right of personal protection above capital, if it may be done. I believe that the obligation of this bar ought not to end when we have simply, in a way, conceded that our Supreme Court may have decided this question. I think the Supreme Court was right and this bar ought to say that they are right and uphold them.

Now, on the question of the initiative and referendum I do not expect to make any extended remarks. I believe that the State of Oregon is teaching the country that the initiative is building up and can build up a great state.

The learned gentleman says that Oregon is Republican, therefore it is a crime to elect a Democrat. I say that the selecting of Governor Chamberlain as a senator of the State of Oregon was one of the greatest steps forward that the American people have ever taken. It is only a question of time when the citizenship of this state will demand the same right, to select for every office the most capable and able and incorruptible man, without regard to whether he claim to be a Democrat, a Populist or Republican—I won't say Socialist—so that this Bar Association ought not, too readily, to lend itself to the views of men who are opposing that which the people of this country are demanding, a return of the government to the people, so that the will of the people may be directly reflected.

I believe in the recall of judges. I never could see why the President of the United States, elected for one term, two terms or for a third term, should be permitted to appoint judges to the federal bench whose terms are practically unlimited. Our national judicial system is a mistake. The people of this country are going to demand that the Supreme Court of the United States shall be an elective body and that they shall be elected to office just the same as the President or anyone else. I honor

judges who are just and fair. I honor men of the opposing political party who are just and fair, but I believe, when they are unjust and unfair, judge or governor, they should be recalled by the sovereign people who placed them in high office. I do not believe that the people of any state will run riot and will, at the instance of any special interest or any interest not lawful, take just judges off the bench. On the contrary, I believe that just men, whether their decisions are popular or not, will be continued upon the bench, but those who forget their obligation to be fair and just, those who forget the fundamental principles of law, those who forget that they are responsible to the will of the people, and either by interest, biased mind or by prejudiced decisions or by some inherent impropriety of conduct render their recall possible,—I do not believe they should say to the people, "You may recall everybody but us; we are immune and cannot be recalled."

As I say, I did not expect to speak upon this subject. I think this Bar Association ought not to assume or suggest that every man has the view of these who have spoken today. I believe it should be the privilege of all of us in this state who have different views, the men who are building up this state, who believe in the initiative, referendum and recall, to express them, and for that reason, although unwillingly, I have delivered these few remarks. (Applause.)

Mr. Joab: Mr. President, ladies and gentlemen: I would like to be heard for just a few minutes upon these subjects which have been discussed here this evening, and I want to say, in harmony with the last speaker, that I am in favor of the referendum, the initiative and the recall. As you all know, he has been a member of one party ever since I lived in this state, and I guess during his whole life, and I have been a representative of another. Now, I have the same complaint as the gentleman who has just ceased speaking, in regard to the similarity of views enunciated by the different speakers today on all the subjects that have been presented. They seem to be in the same line. I want to say to you that it seems to me that

we should hark back to the history of this grand, good government, the grandest and noblest ever founded upon the face of the earth. I have spoken to you before, and came here believing tonight that the spirit of liberty, freedom and independence, as fought for by our forefathers in the Revolutionary period, has brought forth fruits the most wonderful. Ever since, seven hundred years ago, the barons wrenched from King John the Magna Charta, and to this very time, we have been unfolding and vivifying the principles of freedom and equality until today the spirit of liberty encircles the entire globe; but, from some of the sentiments that we have heard today, it seems that, instead of being progressives, some of the people who are among us are retrogressives of the deepest dye. Never before in my life have I observed such a blow at the very foundation rock of constitutional government, and that is that the will of the people is not the supreme law of the land and that this is not a government of the people, for the people and by the people. I say, with all the sincerity and honesty and earnestness and vehemence of which I am possessed that I believe, before God—and I am willing to lay down my life for that principle as my forefathers did at Lexington and Bunker Hill, for this principle of government of the people, for the people and by the people; not by a representative part of the people, but by the people. For the first time in the history of the United States, so far as I know, a chief executive has dared to come before the American people and say to them that we all know that the people cannot govern themselves. Some people have not the courage to enunciate the sentiment, but I say to you that I have the courage to say that I do not believe they are not able to govern themselves or that it is a government by a representative part of the people. Why, gentlemen, "eternal vigilance is the price of liberty," and if we are to encourage such damnable heresies as these, coming from such high places, where are we going to land? I have said, a dozen times in the last year, that we are drifting toward another French Revolution more rapidly than ever any people did before. Like causes produce like effects, and it seems to me, and I

say it with all sincerity, that the interests are blinded to their own selfish purposes when they do not demand for the people equal rights and equal justice before the law. No, I am not a believer in anarchy or socialism. I think my worst enemies in town will say I am as loyal and patriotic a citizen as lives in this city—but I speak out, from the fulness of my heart my honest sentiments. I can see as clearly as I see anything that we are drifting from the old landmarks of a government of the people, for the people and by the people, as the immortal Lincoln pictured it so concretely for us, and we are drifting into class legislation, whether of aristocracy or plutocracy I cannot say. When I heard that sentiment expressed today I harked back to the time of 1775 and I thought I heard Lord North speaking in the English parliament, and he said, "If I were an American as I am an Englishman, were a foreign troop landed in my country I never would lay down my arms, never, never, never!" That is what an Englishman said about our Revolutionary forefathers, and now are we, one hundred and thirty-five years from that time, to sit here and flippantly chatter about this not being a government of the people? For myself, those are my sentiments and I love them and, by the grace of God, I will die for them. Now, if that is not acceptable to the regime, make the most of it. I do not take the pains nor take the liberty to express myself very often, as you all know, but sometimes my blood gets in such a condition that I cannot restrain my feelings, as I feel impelled to speak tonight.

Now, gentlemen, what do we mean by the recall? I have not heard it defined tonight. I am surprised that the matter was not taken up in a more analytical, logical, forcible and theoretical manner. Another word for the recall is a discharge, and what is the discharge? It means that you are tired and worn out and sick and disgusted with the crooked work and the wilfully malicious work of some officer, and you say, "We want to dispense with your services and we ask you to step out." And who should do that? Should it be the public that made the officer, or should it be some foreign, imaginary force or power? They say the recall of judges is dangerous. As

far as I am concerned, I say it is not dangerous, but, on account of the inertia of custom, we are prone to leave in office any person who is not flagrantly offensive or openly corrupt, but when they become tyrannical, when they become insolent, when they become defiant, when they override the rights of the people, then it is time and there should be provision made whereby the people may rise up and say in their power to the wicked and unfaithful servant, "Get thee hence. Bind him hand and foot and cast him into outer darkness."

And so I believe in the recall of judges, and I believe in the initiative and referendum, which is nothing more than the people, the law-making power, expressing their will and declaring what shall be the law. We had a law here that it should be unlawful for any state officer to ride on a railroad pass. I went to the legislature and I begged them to pass that law. They enacted it. We got the fires burning so hot around them that out of cowardice, not out of good conscience, they got in and passed a law providing that state officials should not ride upon passes. They were riding, judges, prosecuting attorneys and members of the legislature, from one point in the state to another, taking vacations on passes and some of them going to the Atlantic coast on passes. It was an outrage. They stood up and argued with me, and I said, in reply, "Did you ever get a pass before you got in the legislature?" "No." "You will never get any when you get out." Some of them are walking now. Why, a newspaper man back in Colorado went to one of the railroad magnates in Denver and said, "My mother is dying, I want to go to her and I cannot go unless you give me a pass," and the man straightened back and said, "We don't know that we owe you anything. We are sorry, very sorry about your mother; too bad, but we can't give it." He came to me in his perplexity and wanted to know what to do. Well, the upshot of it was that we ran him for the legislature upon a three or four combination ticket and he pulled through, and two or three weeks afterwards he received a letter reading: "Honorable So-and-So: We desire to congratulate you most heartily upon the great honors which

have been conferred upon you and trust that you will have a pleasant session in Denver this year. We esteem it an honor and pleasure to hand you herewith a pass for yourself and wife over all our lines. When you are in Denver come and see us. Wishing you the happiest sojourn of your life in the capital, we remain, very truly yours." He came to me and said, "Joab, what would you do about it?" I looked at him and said, "What do you ask me for? You know what to do?" He said, "I do; I am going to write them a good letter and tell them what I think." I said, "Do it." He came home every Saturday night with his wife and nephew. I said to him one day, "Well, Owen, how about that open letter? I haven't seen it," and he said, "Well, I have been so darned busy I haven't had time to do it," and I said, "For God's sake, get busy and do it now." About two weeks before the legislature adjourned he was arrested for soliciting a bribe from the railroad company. They had bribed him with passes and he had taken them and used them and had fallen into their net, and he was so disgraced that he never held his head up again after that legislature was through. Now, I cite these as concrete, specific examples of these things. I think you know where I stand now and why I stand there.

Mr. President: The chair desires to announce that the Association will meet in this hall tomorrow morning at ten o'clock. If there is no further discussion of the propositions which are before the house, a motion to adjourn will be in order.

The meeting was adjourned until the following morning.

MORNING SESSION.

Thursday, August 1st, 1912, 10 A. M.

Mr. President: Gentlemen will be in order. The first matter upon the morning program is the report of the Com-

mittee on Federal Legislation. Judge Hanford will not be able to render a report until this afternoon.

The next matter upon the program is a paper by Mr. Cain, of Spokane. He has just wired the secretary that his train has been delayed and he will not arrive until this afternoon.

The next item is the report of the Legislative Committee, Mr. Dorr, of Seattle, chairman. Will Mr. Dorr report?

Mr. Dorr: Mr. President. Owing to the fact that we have had no session of the legislature in this state since the last annual meeting of the bar association, the Committee on Legislation has no report to make. I think, however, that I should say, in this connection, that possibly I owe an apology to brother Richard Saxe Jones for not having called our committee together to consider the proposed bill that he submitted a year ago on the permanent code commission. I have, however, carried in my mind that that matter belonged to other committees, and I still think so, although the record is against me on that assumption. However, the fact is that I have not considered the matter and have no report to make.

Mr. Jones: Mr. Chairman. Some seventeen years ago, I think it was, I prepared this code commission bill for presentation to the legislature at that time. About two years ago I prepared it and submitted it to the bar association. Last year it was ordered printed in the regular minutes of the bar association meeting so that it could be considered during the ensuing year and come up at this meeting. During this year I have carried on a great deal of correspondence about it, with lawyers all over the United States, replying to inquiries about the bill. I remember the first inquiry came from Atlanta, Georgia. There was also an inquiry from Louisiana, and I know that a great many members of the bar who are here today have had copies of the bill, have written me about it and that it has been examined, to some extent at least, by the members of our body. Of course, I do not want to take up the time of this association on a matter of this kind unless it has been carefully considered, unless the association wants to take it up. From the speeches which we have heard made here and

the addresses that have been made here by other members of the bar on subjects which would come up before a permanent code commission, it seems to me that those who have been invited to address you are all favorable to the very idea that is contained in the bill which I prepared, and I would like to have it come before this body, in some way or other, but I do not think it would be courteous in me to urge it, inasmuch as the body last year referred it to the committee at my request and no report was made.

Mr. President: Mr. Jones did present a proposed act for a code commission which was referred, as the minutes show, to the legislation committee. The legislation committee has made no report upon the act proposed by Mr. Jones and there is no course to follow except to re-refer it to the same committee for its report next year.

Mr. Tanner: Mr. President, it seems to me that that is a matter which should be referred to the Committee on Amendment of Laws. I move you at this time that, as the report of the committee on amendment of laws has been passed over for discussion at this meeting, that the matter of Mr. Jones' bill be passed and considered in the report of the committee on amendment of laws.

The motion received a second, was put and carried.

Mr. President: The committee on Publication is ready to report. The secretary will read the report.

REPORT OF COMMITTEE ON PUBLICATION.

SEATTLE, WASHINGTON, July 30th, 1912

Mr. Wm. T. Dovell, President Washington State Bar Association:

Your Committee on Publication beg leave to report:

First, complete acknowledgment of negligence on its part in performing the duties assigned to it.

It was the ambition of this committee to cause the proceedings of the last meeting to be published within thirty days after the close of the meeting, but for various reasons that purpose was not accomplished.

We recommend, however, that that program be carried out in the future, and to that end suggest that the executives of the Association

require typewritten copies of all papers read at the meeting to be furnished the Secretary before the close of the meeting, and require that stenographic minutes of the proceedings of the meeting be transcribed and furnished the Secretary at the earliest day after the adjournment of the meeting.

The work of preparing copy for the printer and reading proof is somewhat arduous, and we recommend that the Secretary of the Publication Committee be authorized to employ the necessary clerical assistance and have this work done so as to insure its being done more promptly than it has been done in the past.

We recommend also that the proceedings be published in the best typographical form and with heavy binding. This will involve somewhat greater expense, but we believe that the expense will be justified by the results, and that all members of the Association will approve the expenditure when they receive the volumes thus printed.

The proceedings for the session of 1912 will contain matter of unusual interest to the members of the Association throughout the state, and the meeting will only accomplish its greatest possible good by having these proceedings published and in the hands of the members of the Association a considerable time before the November election. We accordingly recommend that authority be given to the officers of the Association and to the Publication Committee to incur the necessary expense of having the proceedings published in good form at least as early as September 15th.

F. V. BROWN, *Chairman.*

Mr. Bates: I move its adoption, and I add to that motion that the necessary appropriation be made as required.

The motion received a second.

Mr. Secretary: Mr. President, the person drawing up that report has not had that experience that I have had in the matter of publication. Now, it is one matter to take the papers and have them prepared, but it has been the rule, and it is a good rule, too, that printer's proof be furnished the speakers, but it is another matter to get the addresses back. Last year, as usual, that was done and the usual experience was had; some papers never were returned. I waited and waited, and wrote and wired, and finally I had to make them up as I thought they should be made up and have them published; so one of the greatest delays to publication is in getting the papers returned from the speakers who have taken them to read proof

I had not read the report of Judge Brown until just now. I suggest there should be some means provided whereby we could compel them to return proof within a certain time.

The motion made by Mr. Bates was put and carried.

Mr. President: Mr. Jesse B. Roote, of Butte, Montana, whose address was slated for this afternoon, has agreed to present his paper this morning.

Mr. Roote will address the association, his subject being "A Government of Laws with an Independent Judiciary."

Mr. Roote: Mr. President and gentlemen of the Bar Association of the State of Washington: Had I known that I would have been placed on the program so near the noon hour, I would have curtailed somewhat the address that I have prepared, but it is rather late to attempt successfully a process of elimination, and I feel that it will be necessary to go through the entire address, and I may be under the necessity of detaining you a little longer than I should.

(For Mr. Roote's address, see Appendix).

Mr. President: If there is nothing further, we will adjourn until 2:30 this afternoon.

Afternoon Session, 2:30 O'Clock.

Mr. President: The first matter upon the afternoon program is an address by Mr. Oscar Cain, of Spokane, his subject being "Modern Tendencies of Legislation."

Mr. Cain: Mr. President and members of the Association:

(For Mr. Cain's address, see Appendix).

Mr. President: The report of the committee on Federal Legislation will be presented by Judge Hanford, of Seattle.

(Judge Hanford was greeted with a great demonstration of applause, the members rising to their feet.)

Mr. Hanford: Mr. President and gentlemen: I wish to express to you my appreciation of the compliment you have given me. The Committee on Federal Legislation has no report to make, but, to avoid a default, I am here to explain the reason why. Since the last meeting of this Association there has been no important legislation which should be called to the attention of this Association now. There is no matter upon which a report could be based which would be of such value in a printed report or written report as to make it deserving of preservation.

The judicial code enacted by Congress went into effect on the first day of January of this year. That speaks for itself. The only important change which has taken place by the enactment of the judicial code is the merging of the United States Circuit Courts into the District Courts, a matter of simplifying the organization of the federal courts which is, of course, advantageous. I took the pains, last night, to go through the laws enacted since this Association met last year, those of the last session and those of the present session. There have been a good many, but they are all of a local and special type which this Association would not be interested in considering.

The Supreme Court has enacted a new set of rules, intended chiefly to conform to the change in the organization affected by the going into effect of the judicial code. Lawyers, however, who have cases to present in the appellate courts should give attention to those new rules. They do make some changes which must be observed in preparing a bill of exceptions and in every stage of procedure in getting a case reviewed and they are made applicable to proceedings in the Circuit Court of Appeals as well as in the Supreme Court One feature adopted in those rules is to cut down and reduce the matter which may be presented to the appellate courts, that is, to have a bill of exceptions in narrative form, to have it confined strictly to the special proposition which the lawyers want to have decided by the appellate courts, a feature of legislation which received attention here yesterday. This

is now in the rules of the Supreme Court and it must be observed.

Among the acts of legislation in Congress which are of special importance is, first, the proposed new code of procedure to take its place along with the criminal code which has been enacted and the judicial code. Just how much progress has been made in perfecting that code we are not informed but we are informed there is no expectation of making substantial progress with it during this Congress. It probably is as well that Congress should not be in haste to perfect that code. There is a disposition on the part of the lawyers of the country, in State Bar Associations and in the American Bar Association, to make a strong effort to reform judicial procedure and it can probably be accomplished with less risk for the state legislatures and the national government to make a radical change of procedure applicable to the whole country at one time. I presume that is probably the reason why the committee having charge of that bill is not endeavoring to crowd the work.

There is a bill pending, to which attention has been called already in a paper presented to this Association, to enact a law by Congress by which the jurisdiction of appellate courts shall be restricted so that cases can only be reversed for what is regarded as substantial error as contradistinguished from technicalities in points of practice. That is an important piece of legislation which the opinion of lawyers is divided upon It is possible to go too far in putting fetters upon the courts in reviewing cases in which a very substantial injury may be accomplished by a technical error.

Another important piece of proposed legislation that has been in Congress is the proposed law to bring employes of interstate commerce corporations under the system of compensation without litigation, growing out of the idea that the business and the industries of the country owe it to the workmen and employes who carry on that business to bear the burdens of injuries which they sustain in the service to the extent of rendering them pecuniary compensation when they

are injured and disabled. There is, of course, a great deal of natural justice in this proposition, and it is simply one of the great problems of our day to know how these matters can be adjusted with fairness without violating constitutional rights in taking the property of one to give it to another. We know that we have pursued the system of requiring injured persons to seek their compensation through litigation, which does not result, in all cases, in justice. Often those who are least deserving receive greater compensation through litigation than those who are really entitled to be compensated out of the business in which they have been engaged.

These are the only things which the committee has deemed it necessary to consider.

Mr. President: What action does the association desire to take on the report of the committee. The chair will entertain a motion to approve the report.

Upon motion the report was approved.

Mr. President: The report of the Committee on Amendment of Laws was made a special order for 2:30 this afternoon. The matter is embodied in the printed slips that are upon the platform here, which, I take it, have been generally distributed. The subject is now open for discussion.

Mr. Rhodes: Mr. President, I move that we take this up topic by topic.

The motion received a second.

Mr. President: If there is no objection, that procedure will be followed. The first matter, then open to discussion will be the first topic, which relates to practice in the superior and supreme courts. Does any member of the association desire to be heard upon that topic?

Mr. Howard: In some instances, this statute says, a paper must be filed and served; in other cases, it must be served and filed, within a certain time. The court, in its early history, when its business was rather oppressive, conceived the idea that it was jurisdictional that it should be done in the proper order. It would not be so difficult if these statutes were consistent in themselves. To cover the suggestion made by the

gentleman, it merely provides, in substance, that whenever any document in any court, commission or body, is required to be served and filed or filed and served within a certain time, it shall be sufficient if filed and served or served and filed within that time, irrespective of the order, whether it is first filed or served. And it is the sense of the committee, as we understand it, that that idea shall be covered in the redraft of section one, to effect that idea, and I move, with that understanding, it be approved.

The motion received a second and was carried.

Mr. President: The next matter for consideration is the second topic, which relates to new trials. The chair understands it to be a proposed act designed for the purpose of preventing unnecessary delay and cost of litigation. Does any member of the association desire to be heard upon that topic?

Mr. Jones: In the second part, which I suppose is at the top of the second page, it says that "the trial judge shall also in any case, on request of either party, instruct the jury to render, besides its general verdict, a special verdict," and so on. It seems to me that word "shall" should be "may," otherwise apparently the mandatory word "shall" would require the judge to submit any question.

Mr. President: The chair desires that it be understood that we are considering these matters by topics as they appear upon the printed slip.

Mr. Howard: Yes. The trouble seems to be that section one and section two have nothing to do with each other. Section one applies to filing and serving. This is what it says: "Whenever a motion shall be made to dismiss any appeal, writ or other proceedings in the supreme court for any cause except that the notice of appeal was not served, writ applied for or proceeding begun within the time limit by law, the motion shall be denied if the appellant or party initiating the writ or proceeding shall within ten days after service of the motion take proper steps to correct the defect or error in the appeal, writ or proceeding, provided that due service had been made in due time on any one respondent."

I don't understand that has been before the convention.

Mr. President: Well, if the gentleman understands that it has not been passed upon, what does the gentleman desire to offer?

Mr. Howard: I want to know what it means; what the chairman had in view—

Mr. Shepard: Mr. President, Mr. Howard is right as to the first and second sections of this first act relating to practice in the superior and supreme courts having no relation to one another, and I presume the body here presumed they were voting on the whole of that first bill, but Mr. Howard evidently misunderstood it. It means simply that, as has been the experience in many cases in the supreme court of this state since the state was founded, that appeals have been lost by some technical failure to serve all parties or failure to draw a bond in the proper form or some other failure to observe technical rules within the proper time or at all. Of course, there must be rules and they must be observed, but it is not necessary, in the administration of justice, that a court should take the position that jurisdiction of the court over the appeal is absolutely lost because one party out of fifteen respondents has not been served at all or served or has not been served within the proper time.

It may not, perhaps, be in precisely the best form, but you have the idea which the committee thinks should be laid before the association.

Mr. Howard: Mr. Chairman: Mr. Shepard, there is one question I want to ask you. I am heartily in favor of the sentiment you are expressing, but suppose there were three respondents, all interested adversely to the appellant, and, adversely interested to each other, do you contend that jurisdiction to try the case would be had in the supreme court by service of notice of appeal upon one of the respondents? Suppose, then, the appellant settled with that respondent and did not move to dismiss the appeal, would the supreme court have purisdiction to try it as to the other two respondents without they ever having heard of the appeal?

Mr. Shepard: As to the question asked by Mr. Howard, regarding the supposed three respondents, I should say the idea of the committee in drafting this proposed section was that jurisdiction would be vested in the supreme court by a service of notice of appeal on any one party. Then any opposing party can move to dismiss and that gives the opportunity, to the opposing party to cure any defects.

Mr. Howard: Suppose the other party does not move to dismiss, what becomes of the other respondents?

Mr. Shepard: I do not say but what it might be desirable to insert a clause to cover that class of cases.

Mr. Jones: Mr. President, I move to strike from the last part of that section the words "provided that due service had been made in due time on any one respondent."

The motion received a second.

Mr. President: It is moved and seconded that the second section of the proposed act relating to practice in the superior and supreme courts be approved with the omission of the words in the last line reading as follows: "provided that due service had been made in due time on any one respondent." Are you ready for the question?

Mr. Rhodes: Mr. President, it does seem to me that if those words are stricken no service will be necessary upon anybody. It seems to me it would be better to say: "provided that due service may have been made in due time on all respondents."

Mr. President: Does the gentleman offer that as an amendment?

Mr. Rhodes: If I am not amending an amendment, I do, sir.

Mr. Garrecht: The effect of carrying that amendment would be to leave it to the supreme court, in any event.

Mr. Howard: Mr. President, I think both these gentlemen who have made these motions are getting a little nearer the truth, but I am afraid the statute, as amended by their motions, would leave the question of service too much in doubt, and I think the best motion to make here would be a substitute motion to recommit that section to the committee with the view of their working out any remedial matters that they have in

view as long as they preserve jurisdiction of the case in such manner as to give anybody timely notice.

Mr. Shepard: I second the motion.

Mr. President: It is moved and seconded that the matter embodied in the second section be re-referred to the committee.

Mr. Shepard: I suppose it will carry the third section, also, with it.

Mr. Howard: Yes, sir.

The motion was put and carried.

Mr. President: The association will now consider the matter under the second topic. The chair will recognize Mr. Jones. I believe Mr. Jones was about to speak to that section.

Mr. Jones: Mr. President, the second paragraph of that act, it seems to me, is not properly drawn. It says: "The trial judge shall also in any case, on request of either party, instruct the jury to render, besides its general verdist, a special verdict" and then go on and require the jury to answer special interrogatories. Now, as suggested by someone else, "in any case" would include a criminal case and a defendant could have a jury answer questions in a criminal case. Attorneys would take advantage of the clause proposed and pursposely submit to the jury any quantity of questions in the hope of befogging the jury and get special verdicts. It seems to me that that should be discretionary with the trial court, and I think the words "also in any case" ought to be stricken and the word "may" substituted for "shall."

Mr. President: Hadn't you better have it "may in its discretion?"

Mr. Jones: It may be that way, that the trial court "May in any case or at its discretion—

Mr. Shepard: The committee will accept the amendment by substituting the word "may" for "shall," and "may, in its descretion."

Mr. Howard: What change does that make in the present law?

Mr. President: The chair is not presumed to know what the law is, and therefore cannot answer the gentleman's question.

Mr. Rhodes: I move to strike out the last paragraph, the paragraph beginning: "The trial judge shall also in any case."

The motion received a second, was put and carried.

Mr. President: The chair will entertain a motion to approve or disapprove the first paragraph of the proposed act.

Mr. Robertson: I cannot see any benefit from the adoption of this proposed law. Under our statute as it now is, and under the settled practice in the supreme court, the superior judge may submit to the jury a special finding which is upon a question of fact, and upon that special finding, which becomes part of the verdict, and upon the general verdict, the court does pass at the time a motion is made for judgment not withstanding the verdict, or a new trial. This cumbersome proposition here does nothing to simplify the practice that we now have and, to my mind, affords no new remedy. I therefore move that the first paragraph be disapproved.

The motion received a second.

Mr. President: It is moved and seconded that that portion of the proposed act which is embodied in the first paragraph be disapproved.

Mr. Howard: I would just like to ask this question. The proposed act provides as follows: "No judgment shall be set aside, or reversed, or new trial granted, by any court in any case, civil or criminal, on the ground of misdirection of the jury"—I can understand that—"or the improper admission or rejection of evidence." Now, in a criminal trial, how are you going to get the rejected evidence before the court? Is it to go before the jury and then be rejected to get it into the record? Is the jury to be excused and the evidence offered and excluded? I am in favor of either the recommitting or the striking of it.

Mr. Shepard: Taking up the question proposed by Mr. Howard last, in any statute attempted to be drawn in general language, to cover a variety of cases, the language must be interpreted, as the court has frequently said, distributively, each sentence or word in accordance with the particular class of cases.

This, as I have said before, is almost a literal copy, I think with the changing of two or three words, of an act that has been prepared and discussed in the American Bar Association for a number of years and has been drawn, unquestionably, by very able lawyers. I cannot remember who they were. The courts have been very greatly criticised, sometimes with justice and sometimes with great injustice, particularly in this recent agitation against the courts for their decision of cases upon technical grounds. The act is designed to meet this criticism.

Mr. President: The motion is to disapprove this portion of the report.

Upon division of the house, the motion to disapprove was declared carried.

Mr. President: The association will now consider the portion under topic numbered 3. There are two matters embodied in that topic. The first is an act relating to the administration of community property. We will consider that first.

Mr. Rhodes: I want to say that that is a matter of considerable importance. If you will reflect upon it a moment you will realize that this takes away from every man drawing a will the right to name his executor. It vests it absolutely in his wife, whether she becomes executrix or not. There is possibly some feeling that sometimes the general rule that a party making his will has a right to name his executor, frequently results in working a hardship upon a surviving spouse, but I believe there is a greater hardship upon a husband who has large financial interests. I do believe this very general rule that we are laying down here, which takes that right away from the husband in all cases unless the wife consents to it, is a very harsh rule. I think this is a case that comes very happily under Mr. Cain's statement that we are too prone to tinker with the law.

Mr. Terhune: I move that this act relating to the administration of community property be disapproved.

The motion received support.

Mr. President: It is moved and seconded that the proposed act be disapproved.

Mr. Rummens: Suppose you have, on the other hand, a bank president who owns practically his own bank, and his wife and he are estranged, and she died leaving a will providing that some outside person shall take charge of the bank.

Mr. Leuders: The statute provides that, as to community property, the husband or wife can will only half of it, that is, the community interest, so, if this act be adopted as proposed by the committee, I cannot see any objection to it. The rule would simply be that the surviving husband or surviving wife would not be deprived of the right to manage and control his or her interest in the community.

Mr. Vance: I think this is a very desirable suggestion, because it calls for the services of two attorneys instead of one. (Laughter).

The motion to disapprove the proposed act was put and carried.

Mr. President: The next is a proposed act relating to the recovery of damages for death of a person caused by wrongful act or neglect.

Mr. Rhodes: Mr. President, I move to amend the second section, which is section 4828, by striking out the last line. I would say that I have read this act over carefully and am heartily in sympathy with it. I think the evil which it seeks to correct should be corrected, but I do not believe the doors should be thrown open to recovery by an administrator acting for the creditors. If a party giving credit to a man who is working about dangerous machinery or who is liable to be killed has in mind the fact that he may possibly be killed and that they may get some money in the way of damages, they ought to employ a better credit man. I believe this would throw open the door to another serious evil and that is that suits would be constantly waged or brought by administrators, in most cases funeral directors, to recover exorbitant funeral bills.

Mr. President: The motion, gentlemen, is that the act be

approved after the last line of the second section is sticken.

Mr. Leonard: I believe that the representative, not necessarily the widow, not necessarily the deceased's sister or brother, but the representative of the deceased should have a right of action. I believe, Mr. Chairman, that the present law should be amended and this particular provision which is under consideration should be amended to read that when the death of a person is caused by the wrongful act or neglect of another, the representative may maintain an action for damages against the person causing death, and end right there. I believe that is sufficient.

Mr. Robertson: I cannot see why it is necessary for us to rescind the action of this association in adopting the resolution that a creditor can have a right of action against a person who has, by wrongful act, taken the life of the person that they are in contractual relation with. I know the corporations are opposed to this added obligation that is imposed upon them to compensate persons injured through their negligence, but I think that a creditor who has lost his opportunity to be compensated by an individual on account of the wrongful act of another ought to have the right to resort to the person who has caused that injury to him for a recovery.

Mr. Simon: I am going to vote in favor of this measure, but I do not think any substantial good will result from it. The last Republican King County convention we had they passed a plank in their platform pledging the legislative nominees to the support of legislation along this line. Did they do it? No; history says they worked against it. A gentleman from Ferry county sought to introduce an act covering this very thing, and the representatives of the railroads defeated it.

Mr. Bronson: I often hear, in these meetings the remark that those who represent corporations would be opposed to such legislation. Now, I represent some public service corporations myself but I want to call the gentleman's attention to the fact that the parties who bring the suits furnish employment to the attorneys for the corporations and it is presumable

that they are interested in making a living just the same as the others, and I do not believe that, ordinarily, the attorney representing the public service corporation is interested in defeating the litigation which preserves his livelihood. So far as this bill is concerned, I think anyone who causes the death of another through his act of omission or commission should pay for the damages. I do not think that any bill of this kind should be made a means of speculation. I think the objection that has been made could be very well met by adding at the end of the section, "provided that recovery shall be limited in any event to such amount as shall be necessary to pay the debts of the deceased and the costs of administration." The law is for the purpose of taking care of either the family or the creditors who have been damaged by the act and not for the purpose of furnishing a fund for somebody to scramble over in court. I move that the amendment be made.

The motion received a second.

Mr. President: It has been moved and seconded, as an amendment, that the act as prepared be approved with the addition, at the end of what is specified in the proposed act as section 4828, of words to the following effect: "Provided, however, that in any event the recovery shall be limited to such a sum as is necessary to pay the debts of the deceased and the cost of litigation."

Judge Kellogg: I do not think they ought to be required to wait that long.

Mr. Holbrook: It seems to me that the suggestion of Mr. Bronson does not cover the question of the measure of damages. A man might die owing ten or fifteen thousand dollars, and it might be that the claims were only ten or fifteen hundred dollars. There should be some limit to the measure of damages, at any rate.

Mr. President: The question is upon the adoption of the amendment.

Mr. Hamlin: We have assumed that the deceased has no property at the time of the injury. Suppose he is a man worth twenty-five thousand dollars and yet the claims are only

twenty-five hundred dollars. Would we have a right to recover to the amount of twenty-five hundred dollars or does that go to the amount—

Mr. Bronson: I should think the language of the amendment should be "such sum as was necessary to pay his debts."

Mr. Jones: If I had the making of the laws there would be no law by which any creditor could ever collect a debt, except a secured debt, and then I would fail. This, it seems to me, opens up a lot of questions that cannot be settled here unless discussed thoroughly for several weeks. I move, as a substitute, that this be approved with the striking out of the last line of section 4828.

The motion was seconded.

Mr. President: The question is upon the amendment offered by Mr. Bronson. I understand, Mr. Jones, your proposed substitute is the identical motion made by Mr. Rhodes originally. The question is upon the amendment offered by Mr. Bronson, which is, as the chair understands it, that the proposed act be approved with the addition of the following words at the close of section 4828, "provided, however, that the recovery in any event shall be limited to such sum as shall be necessary to pay the debts of the deceased together with costs of administration."

Mr. Stiles: Mr. President, I do not represent any public service corporation, but I am part of the public, and, as the public is sometimes called upon to answer for the death of a man, I am decidedly opposed, on behalf of that part of the public I represent to putting into effect a law which would make it so that a man who had been so shiftless during his life that he had accumulated nothing with which to pay his debts and had been so far without conscience that he had incurred debts which he could not pay, that his estate should be in such condition, upon his death, that his creditors, who had given him credit, without reason, should then be allowed to debate upon whether, during life, he would ever have paid those debts at all.

The question upon the amendment offered by Mr. Bronson was then put to the house and lost.

Mr. daPonte: I move to strike out that line altogether.

The motion was seconded.

Mr. President: It is moved and seconded that the last line of the proposed act, section 4828, be disapproved.

The motion, being put to the house, was carried.

Mr. Rhodes: Now, I move, with that stricken out, that the entire act be approved.

The motion was seconded.

Mr. President: It is moved and seconded that the proposed act, as amended, be approved. Are you ready for the question?

Mr. Garrecht: I move to amend that by striking out the next paragraph. I do not see any purpose in that. I think it is covered by section 4828 as it stands now.

The motion received a second.

Mr. President: The gentleman moves to amend by striking out the third paragraph of the proposed act, beginning: "When the death of a person is caused," etc.

Mr. Coiner: Mr. Chairman, I simply want to call attention, before this matter is passed, to a small matter referred to a moment ago. The fourth line of the section provides that "when the deceased is a woman, the widower and his children." Now, that should read "her children."

Mr. President: I understood that the suggestion was accepted by Mr. Shepard.

Mr. Coiner: I did not know that it was acted upon.

Mr. President: It was understood it should be "their children."

Mr. Shepard: "Her children."

Mr. President: I understood that the suggestion that the change be made in the verbiage was accepted.

Mr. Terhune: If they are going to make the change there, why not make a change on the third line, then, and say "the widower and his children?"

Mr. President: The question is upon the amendment of-

fered by Mr. Garrecht to approve the act as proposed after striking out the third paragraph beginning "when the death of a person is caused," etc.

The motion, upon division of the house, was carried.

Mr. President: That disposes of the proposed act. The association will next consider the fourth topic, which is a proposed act providing for the mortgaging of property by guardians.

Mr. Terhune: I move that that be approved as presented by the committee.

The motion received a second, was put and carried.

Mr. Terhune: Under the motion made this morning, the consideration of the act for a code and code commission as proposed by Mr. Jones, and which has been amended by suggestions from Mr. Arthur, will come up at this time, and, Mr. President, I move you that the code commission act prepared by Richard Saxe Jones, as published in the proceedings of this association for the year 1911, and amended by Mr. Jones, be recommended for passage by the next legislature. The proposed act, as amended, is here in form and I would like to have the secretary read it.

Mr. President: Will Mr. Jones state the substance of the proposed act?

Mr. Jones reads the proposed act which is printed in the appendix herein.

Mr. President: The question is upon the adoption of the motion by Mr. Terhune.

Mr. Howard: Mr. Chairman, I merely desire to say that the law does not require anyone to do a vain thing, neither do I think the bar association should do a vain thing. I am heartily in favor of this act and I would like to see it pass, but I desire to be recorded as voting against submitting it to the legislature, because I do not believe they will ever pay any attention to it.

Mr. Wright: I move that the whole matter be placed on the table.

The motion received a second.

Mr. President: It has been moved to lay the matter upon the table.

Being put to the house, the motion carried.

Mr. President: A matter which was not disposed of yesterday was the recommendation of the commission appointed by the governor as to the appellate proocedure. What action does the Association desire to take in regard to that?

Mr. Howard: As I understand it, the main object is to provide an intermediate appellate court, between the superior and supreme court. I had the honor to be a member of a committee of the State Bar Association several years ago which prepared and presented an act in which two judges were added to the supreme court and departments arranged for. At that time the supreme court was in favor of it, and Judge Hadley recommended an intermediate court, but when we went before the legislature and began to consider it, we found it not only required a constitutional amendment but it required an enormous expenditure of money, which we knew the legislature would not provide. We made an exhaustive investigation as to other jurisdictions where they had an intermediate court and the result of it was the conclusion that the intermediate court was an additional expense and an additional delay, because the cases went on to the Supreme Court anyway. I therefore move that the association disapprove of that part of the report.

The motion was supported.

Mr. President: The question is upon the motion to disapprove the report of the commission upon appellate procedure.

Upon being put to the house, the motion carried.

The next order of business being the Election of Officers the following were elected officers of the association for the ensuing year:

President—B. S. Grosscup, Tacoma.

Secretary—C. Will Shaffer, Olympia.

Treasurer—Arthur Remington, Olympia.

Delegates to American Bar Association—John T. Condon, Frederick V. Brown, W. Vaughn Tanner.

The recommendation of the nominating committee that the

matter of selecting a place for the next meeting be left to the executive committee, was adopted.

Mr. President: Is there any matter which any member of the association desires to call up under miscellaneous business?

Mr. Higgins: I understand the association will not again be in session on this annual occasion. I therefore move that the association extend to our Tacoma hosts its thanks for the splendid entertainment so far received and for the program yet to come, which we know, from our experience so far, will be a splendid one.

The motion was seconded, put to the house and unanimously carried.

Mr. Arthur: Mr. President, we have been favored with two splendid addresses by brethren from the neighboring states of Montana and Oregon. I move you that the thanks of the association be tendered Mr. Roote and Mr. Bristol.

The motion received a second.

Mr. President: It is moved and seconded that the thanks of the State Bar Association be extended to Mr. Roote, of Montana, and Mr. Bristol, of Oregon, for the addresses they have delivered.

Mr. Robertson: Mr. President, while I have not the slightest objection to extending the compliment to these gentlemen who addressed us, we have had no opportunity to debate the important questions that were discussed by them, and, so far as I am concerned, I radically dissent from the views expressed by these gentlemen. I do not believe this bar association, at this time, can afford to go on record against the initiative, referendum and recall.

Mr. President: May the chair offer a suggestion? The gentlemen would certainly not doubt the propriety of the association thanking the gentlemen for their efforts. Opportunity to debate or criticise the papers should, of course, be preserved to the members under the head of unfinished business. It can not be possible that the chair understands the gentleman to object to the thanks of the association being tendered to the gentlemen who have favored us?

Mr. Robertson: No, with the qualification I made, as not desiring to commit this Association in any manner to what I consider a backward step.

Mr. Dorr: I do not understand that this extends to the gentlemen anything but the thanks of the Association, which is a matter of courtesy, and I trust that included in the motion will be all those gentlemen who have favored us with such able addresses and papers.

Mr. President: It is out of order to tender thanks to any member of the Association. The rules of the Association forbid.

Mr. Joab: I want to say that I most heartily concur in the sentiment expressed by Mr. Robertson, of Spokane. I think it was very unwise for the gentleman to come here, and come here as a Democrat—and a Woodrow Wilson Democrat at that—and attempt to claim, by way of illustration, in the case of Pontius Pilate—

Mr. Secretary: I rise to a point of order.

Mr. President: State the point of order.

Mr. Secretary: This discussion is foreign to the motion. It is customary to extend the thanks of the Association to gentlemen who have favored the Association.

Mr. President: The Chair is bound to sustain the point of order, and the Chair begs to suggest that it might be considered an act of discourtesy if we declined to thank the gentlemen who have given us their efforts. The Chair is bound to rule that Colonel Joab is out of order.

Mr. Joab: Well, Mr. President, I think I am understood.

Mr. Wright: I think the gentleman misconstrues the meaning of the motion. The motion is not made for the purpose of endorsing the views of these speakers.

Mr. President: The Chair so understands it.

The motion was put to the house and unanimously carried.

Mr. Secretary: Mr. President, I want to say just this much —and I have been very loath to mention it. There has been more or less criticism, by some gentlemen about the program that was made up for this meeting. They have said some-

thing about certain matters having been pushed down their throats, the implication being that nothing should have been heard on the program except that which they themselves approve. That, I say, is not fair. I wish to say this, in defense of the program, that it is not made up for the purpose of voicing one idea or any particular theory. It is made up for the purpose of entertaining us. Mr. Walsh, of Montana, was asked to entertain us last year, and it was not suggested to him what his subject should be. We thanked him for his address, although a large part of the Association were opposed to the views he expressed. We asked Mr. Roote, at this time, to address us, and did not ask him to speak upon any particular subject. As to the other matter, it was our desire to have a discussion of the initiative, referendum and recall. We invited Governor Johnson, of California, to come here to address us in advocacy of these doctrines. At the last minute, Governor Johnson wired that he could not come. We then made an effort to secure Govnor Teats, of Tacoma, to present that side, and he could not be here to do it. We then made it an open forum. If there was anything that could be done more fair than that I cannot conceive of it. The charge has been made here that the committee has from time to time made up the program to present the views that might be favorable to the Executive Committee, and I resent it; I do most emphatically resent it.

Mr. Rochester: I did not hear the discussion last night, and I am sorry. I did hear the paper this afternoon. I did vote for the motion by Brother Arthur to extend our thanks to the gentlemen who spoke to us. I absolutely dissent from every sentiment expressed in the paper presented by Mr. Roote. At the same time I voted to thank him for coming here to tell us what he thought. I am in favor of the recall of judges as well as the recall of justices of the peace, if they are entitled to be recalled and I want to record my stand in that regard, but I did vote to thank the gentleman for coming here.

Mr. Joab: Now, gentlemen, I want consent to say some-

thing with reference to that one passage quoted that refers to Pontius Pilate. They know what I think—

(Voices): Go ahead.

Mr. President: The gentlemen will be in order. Colonel Joab has the floor.

Mr. Joab: The attempted application of the case of Pontius Pilate to this case of judicial recall is perfectly absurd. I will say that the recall of Pontius Pilate was due to the clamor of the Roman soldiery, and it was not due to the masses that threw their garments and palm branches in front of the Divine Master. I am not a professed Christian, but I will stand up and tell the truth and say that Pontius Pilate, fearing the soldiery and his own standing at the court of Caesar, permitted them to have their way. Why? Because he was a most corrupt, a most wicked, a most contemptible character, and it should not be stated that he was overcome by the masses, but by Tiberius Caesar, the Roman soldiers, the corrupt Pharisees and the thieves that Jesus Christ drove out of the temple.

Mr. Terhune: I would like to ask a question. Does he doubt the Bible?

Mr. Joab: I do not.

Mr. Robertson: I agree that the use of that Biblical illustration, as a shibboleth of those who oppose the recall, having been used by Senator Jones of this state, shows an absolute misunderstanding of that important trial. Jesus Christ was betrayed by Judas Iscariot, who was furnished thirty pieces of silver by the chief priests, and he was taken before the great sanhedrim, a Jewish organization that held all the power at that time in Jerusalem, and they laid charges against him, claiming that he had said that he could destroy the temple and rebuild it in three days. False witnesses accused him of that, and he was convicted before the sanhedrim and those priests, who being unable under the law to execute their own sentence, took him before Pilate for the purpose of having him tried again in order that they might crucify him. Pontius

Pilate was at that time in Jerusalem and Jesus Christ was brought before him. Pontius Pilate then was proceeding to act, not at the instance of the people. All the people had taken the teachings of Jesus Christ to heart. He had risen from the humblest origin, the son of a carpenter in the despised city of Nazareth, and there, on the shores of Galilee, they began to worship him as a man who had accomplished great good for the uplift of his race, and the chief priests and Pharisees, recognizing that fact, determined, as powerful interests always determine, to destroy him. When they took him before Pontius Pilate and Pontius Pilate could find nothing to censure him for, they sent him to Herod, who was visiting then in Jerusalem, and when he was sent back, Pilate gave him over to the priests. Why? Because he feared that he would be reported to Caesar. Therefore this corrupt judge condemned this innocent man to death and turned him over to the Roman soldiery who mocked and buffeted him and marched him up the mountain, with his cross upon his shoulder and a crown of thorns upon his head, and they executed him there, by a judicial murder. Why, to say that that mob crucified that man or that divine character is wrong. He was crucified by a corrupt judiciary, and if that character of decision can be upheld now before the members of this bar as a reason why a recall of a judge should never be permitted, it seems to me it is an absolute misunderstanding of the facts. I do not charge Mr. Shaffer with the doing of anything improper, but I regret that all these papers have had the tendency, in my opinion, to challenge us who favor the referendum and recall, stating we were anarchists or that we are traitors to our country or are unsafe citizens. I say, on the contrary, that the character of these papers is not a compliment to the bar and, although I dissent radically from those papers, yet I thank those gentlemen who came here and presented them, because I believe,—

"From the friction of thought flashes light, and from differing views ultimately the truth emerges."

Mr. Arthur: I move that the Association now adjourn.

The motion received a second.

Mr. President: Judge Arthur has moved that the Association do now adjourn. All those in favor will signify it by saying aye; contrary minded no. The meeting is adjourned sine die.

APPENDIX

MEMBERSHIP 1912

Abel, A. M.....Aberdeen
Abel, W. H., Yeon Building.....Portland, Ore.
Abbott, W. H., P. O. Box 355.....Bellingham
Abrams, C. E.....Bellingham
Abrams, J. B., First Nat'l Bank Building...Bellingham
Adams, B. B., 1118 Paulsen Building.....Spokane
Adams, J. B.....Leavenworth
Albert, Chas. S., G. N. Passenger Station....Spokane
Albertson, R, B., Superior Judge.....Seattle
Alderson, Tom, 603 N. Y. Block..... Seattle
Alexander, J. B., 800 Leary Building.....Seattle
Allen, Charles E., 630-1 N. Y. Block.....Seattle
Allen, F. D., 1004 Paulsen Building.....Spokane
Alston, C. G., Am. Nat'l Bank Building.....Everett
Anders, Will H.....Olympia
Arntson, Anthony N., Fidelity Building....Tacoma
Arthur, John, N. Y. Block.....Seattle
Ashton, Jas. M., 411 Fidelity Building.....Tacoma
Askren, Wm. D., 914 Nat'l Realty Building..Tacoma
Aust, Geo. F., Boston Block.....Seattle
Avery, A. G., Ex. Nat'l Bank Building.....Spokane
Aylmore, Reeves, Jr., 575 Colman Building..Seattle
Bailey, H. Wade.....Colville
Ballinger, Harry, 529-533 Pioneer Building..Seattle
Ballinger, R. A., Alaska Building.....Seattle
Barnes, John G.....Waterman
Barney, C. R., 313 N. Y. Block.....Seattle
Barry, A. W.....Riverside
Bartleson, Chas. .....Spokane
Batchelor, Chester A., 332 N. Y. Block.....Seattle
Bates, C. O., 1107 Nat'l Realty Building....Tacoma
Battle, Alfred, 901 Alaska Building.....Seattle
Bausman, Frederick, Hoge Building.....Seattle
Baxter, Chauncey L., 539 N. Y. Block.....Seattle

Beach, H. C., P. O. Box 114.....Bellingham
Beals, Walter B., Haller Building.....Seattle
Beatty, W. H., Colman Building.....Seattle
Bebb, Wm. B., 517 Mutual Life Building...Seattle
Beck, W. T.....Republic
Beebe, A. H., 710 Central Building.....Seattle
Bell, Eugene W., 749-751 N. Y. Block.....Seattle
Bell, Ralph C.....Everett
Bell, W. P., Superior Judge.....Everett
Bell, A. B., Bank of California Building....Tacoma
Bennett, Burton E., Pacific Block.....Seattle
Birdseye, L. J., 37 Zeigler Block.....Spokane
Birdsall, Wm. T.....Spokane
Bixby, Frank, Sunset Building.....Bellingham
Black, W. W., Superior Judge.....Everett
Blaine, E. F., 307 Lowman Building.....Seattle
Blair, John E., 617 Hyde Building.....Spokane
Blake, Henry F., Burke Building.....Seattle
Blattnor, F. S., Nat'l Bank of Com. Bldg....Tacoma
Boner, E. E., Finch Building.....Aberdeen
Boner, W. W., Finch Building.....Aberdeen
Booth, Robt. F., Lowman Building.....Seattle
Bostwick, S. A.....Everett
Boyle, Lon .....Prosser
Bradford, James E., Corp. Counsel's Office..Seattle
Brady, Edward, 1308 Alaska Building.....Seattle
Brandt, Emil J., Lumber Exchange.....Seattle
Brawley, Augustus .....Mt. Vernon
Brents, Thos. H., Superior Judge.....Walla Walla
Bridges, J. B.....Aberdeen
Brockway, E. B., Fidelity Building.....Tacoma
Bronson, Ira, Colman Building.....Seattle
Brooks, J. W., 15-16 Dooley Building.....Walla Walla
Brown, Ed J., Starr-Boyd Building.....Seattle
Brown, F. V., King Street Station.....Seattle
Brown, J. W., 314-16 Northern Bank Bldg..Seattle
Brown, L. Frank, Pioneer Building.....Seattle

Brown, L. H., 515 Empire State Building...Spokane
Brown, O. P., Clover Building.....Bellingham
Brown, W. P.....Bellingham
Brownell, F. H., Henry Building.....Seattle
Bruce, S. M.....Bellingham
Brueggerhoff, Wm., 519 Central Building...Seattle
Bryan, James W.....Bremerton
Bryson, Herbert C., 312 Drumheller Bldg...Walla Walla
Bundy, E. W., Leary Building.....Seattle
Burke, Thomas, 408 Burke Building.....Seattle
Burkey, C. P., 807 Nat'l Realty Building....Tacoma
Burkey, J. E., 807 Nat'l Realty Building....Tacoma
Burkheimer, John E., N. Y. Block.....Seattle
Butler, Marion A., N. Y. Block.....Seattle
Buxton, J. R., P. O. Box 205.....Centralia
Byers, Ovid A., 507 Colman Building.....Seattle
Cade, L. E.....Wenatchee
Cain, Oscar, Federal Building.....Spokane
Callahan, James P. H., Suite 14, Hicks Blk..Hoquiam
Cameron, Moncrieffe, Central Building.....Seattle
Campbell, F., Provident Building.....Tacoma
Campbell, J. B., 1124 Old Nat'l Bank Bldg..Spokane
Campbell, J. D., 310-314 Fernwell Building..Spokane
Campbell, R. E., Assistant Attorney Gen....Olympia
Campbell, W. F.....Hoquiam
Campbell, W. E.....Hoquiam
Canfield, H. W., Traders Block.....Spokane
Cannon, E. J., Old Nat'l Bank Building.....Spokane
Cannon, John M.....Ritzville
Card, E. N., Superior Judge.....Tacoma
Carey, Daniel H.....Colville
Carey, Stephen H., Assistant Attornel Gen..Olympia
Carkeek, Vivian M., Am. Bank Building....Seattle
Carroll, P. P., 203 Maynard Building.....Seattle
Chadwick, S. J., Supreme Judge.....Olympia
Chapman, William O., Superior Judge.....Tacoma
Cheney, B. G.....Montesano

Chester, L. F., G. N. Station Building.....Spokane
Christian, Walter, Nat'l Realty Building....Tacoma
Churchill, F. B.....Kent
Claypool, C. E.....Olympia
Cleland, Hance H., 402 Hyde Building.....Spokane
Clementson, Geo. H., Pacific Block.....Seattle
Clifford, M. L., Superior Judge.....Tacoma
Clise, H. R., 405 N. Y. Block.....Seattle
Cochran, J. E.....Port Angeles
Cohn, Harry S., 419 Hyde Building.....Spokane
Coiner, B. W.....Tacoma
Cole, Geo. B., 336-40 N. Y. Block.....Seattle
Cole, Irving T., Boston Block.....Seattle
Coleman, A. R.....Port Townsend
Coleman, J. A., P. O. Box 445.....Everett
Coleman, Wilbra .....Sedro Woolley
Collins, J. Milton, 510 Hyde Building.....Spokane
Condon, John T., Dean Univ. Law School...Seattle
Congleton, Chas. E., 811 Lowman Building..Seattle
Connor, E. O., Old Nat'l Bank Building....Spokane
Conover, D. C., 302-3 N. Y. Block.....Seattle
Cooley, H. D.....Everett
Corbin, E. N.....Wenatchee
Cosgrove, H. G., 817-23 Alaska Building....Seattle
Craven, A. J.....Bellingham
Cross, Emerson A.....Aberdeen
Cross, Daniel T.....Ephrata
Crow, Denton M., Jamieson Building.....Spokane
Crow, Herman D., Supreme Judge.....Olympia
Cunningham, Fred J., 1220 Old Nat. Bk. Bld.Spokane
Cushman, E. E., U. S. District Judge..... Tacoma
Cutting, S. H., 1022 Paulsen Building.....Spokane
Daly, W. J.....Seattle
Darch, Wm. F., Box 265.....Goldendale
Davidson, J. B.....Ellensburg
Davis, Allen S.....North Yakima

Davis, Arthur W., 41-45 Zeigler Building...Spokane
Davis, Robert M., Fidelity Building.....Tacoma
Dawson, W. S., 304-5 Traders Block.....Spokane
Day, E. M.....Bellingham
Day, Vince A., 1112 Paulsen Building.....Spokane
Delameter, C. M., 603 Paulsen Building.....Spokane
Delle, Lee C.....North Yakima
Deming, A. W.....Olympia
Denning, J. Henry, P. O. Box 482.....Seattle
Dentler, Grant A., 113 So. Tenth Street.....Tacoma
Desmond, Grover E., 1311 Alaska Building..Seattle
De Steiguer, Geo. E., 618 N. Y. Block.....Seattle
Devers, R. A., N. Y. Block.....Seattle
Dewart, F. M., Old Nat'l Bank Building....Spokane
Dobbs, Chas. J., 1062-4 Empire Building....Seattle
Donworth, Geo., Hoge Building.....Seattle
Dorety, F. G., G. N. Legal Department.....Seattle
Dorr, C. W., 375 Colman Building.....Seattle
Douglas, J. F., 711-14 White Building.....Seattle
Douglas, James H., 711-14 White Building..Seattle
Dovell, W. T., Colman Building.....Seattle
Dow, Lorenzo .....Tacoma
Dowd, James B., Pioneer Building.....Seattle
Drain, James A., 1502 H Street N. W.....Washington, D. C.
Drain, Dale D., 615 Hyde Building.....Spokane
Dudley, F. M., Henry Building.....Seattle
Dunphy, W. H.....Walla Walla
Duryee, Schuyler, Stokes Building.....Everett
Earle, Dan, Burke Building.....Seattle
Easterday, J. H., Nat'l Realty Building.....Tacoma
Edge, Lester P., Hyde Building.....Spokane
Edsen, Edward P., 300-302 Maynard Bldg...Seattle
Ellis, O. G., Supreme Judge.....Olympia
Emerson, W. M.....Chelan
Emmons, R. W., N. Y. Block.....Seattle

Englehart, Ira P., P. O. Box AA.....North Yakima
Eshelman, Carl E.....Tacoma
Eskridge, Richard S., Colman Building.....Seattle
Falknor, A. J., Seattle Elec. Co. Building...Seattle
Farrell, C. H., 1011 Am. Bank Building.....Seattle
Faussett, R. J., 206-7 Stokes Building.....Everett
Fay, John P., N. Y. Block.....Seattle
Featherkile, D. W.....Bellingham
Felger, W. W., 27-28 Downs Block.....Seattle
Fisk, T. P.....Shelton
Fitch, J. F.....Tacoma
Fitzpatrick, John L.....Seattle
Flood, Ernest M., Peyton Block.....Spokane
Flick, Edwin H., 500 Leary Building.....Seattle
Fogg, Edward, California Building.....Tacoma
Folsom, H. D. Jr., 412-416 Arcade Annex...Seattle
Folsom, Myron A., 1117 Paulsen Building...Spokane
Force, H. C., 1212 Hoge Building.....Seattle
Fouts, Chas. M., Hinckley Building.....Seattle
Foutz, Will H., Old National Bank Building.Spokane
Frater, A. W., Superior Judge.....Seattle
Frost, J. E.....Olympia
Fullerton, Mark A., Supreme Judge.....Olympia
Fulton, Walter, Hoge Building.....Seattle
Gandy, Lloyd E., 1220 Old Nat'l Bk. Bldg..Spokane
Garland, Marion .....Shelton
Garrecht, Francis A.....Walla Walla
Gaston, O. C., Lock Box 256.....Everett
Gay, W. R., Alaska Building.....Seattle
Gephart, James M., 502 Bailey Building....Seattle
Geraghty, J. M., Columbia Building.....Spokane
Gilbert, W. S., Paulsen Building.....Spokane
Gill, Hiram, Colman Building.....Seattle
Gilliam, Mitchell, Superior Judge.....Seattle

Girard, F. W., 402-3 Empire State Building..Spokane
Gleason, Chas. S., Burke Building.....Seattle
Gnagey, U. D.....Port Townsend
Godfrey, James J., Lowman Building.....Seattle
Godman, M. M.....Seattle
Goodale, Robt. C., 1408 Hoge Building.....Seattle
Gordon, Carroll.....Olympia
Gorham, W. H., P. O. Box 263.....Seattle
Gose, C. C.....Walla Walla
Gose, M. F., Supreme Judge.....Olympia
Grady, Thomas E., Superior Judge.....North Yakima
Graham, E. A.....Aberdeen
Granger, H. T., N. Y. Block.....Seattle
Graves, Carroll B., Central Building.....Seattle
Graves, Will G., 1230 Old Nat. Bk. Bldg....Spokane
Green, Frank E., Burke Building.....Seattle
Green, J. Lindley, Assistant U. S. Attorney..Seward, Alaska
Greene, Roger S., Burke Building.....Seattle
Greene, R. W.....Bellingham
Greenman, F. W., 1222 Fidelity Building....Tacoma
Greshman, Wilson C.....Conconully
Griffiths, Frank S., 619-21 Alaska Building..Seattle
Griggs, H. S., 1115 Fidelity Building.....Tacoma
Grimshaw, W. A., Superior Judge.....Wenatchee
Grinstead, F. Leo.....Colville
Grinstead, Loren, Colman Building.....Seattle
Griswold, W. J.....Bellingham
Grosscup, B. S., Bank of Cal. Building.....Tacoma
Guie, E. H., 810 Leary Building.....Seattle
Guie, J. A., 800 Leary Building.....Seattle
Hadley, A. M., Mason Building.....Bellingham
Hadley, H. E., Colman Building.....Seattle
Hadley, L. H., P. O. Box 355.....Bellingham
Haight, James A., Haight Building.....Seattle
Hall, Calvin S., Alaska Building.....Seattle

Halverstadt, Dallas V., Hoge Building.....Seattle
Hamblen, L. R., Paulsen Building.....Spokane
Hamlin, Robert D., 710 N. Y. Block.....Seattle
Hammond, Frank, 301 Epler Building.....Seattle
Hanford, C. H.....Seattle
Hanford, E. C., Burke Building.....Seattle
Happy, Cyrus, 16-19 Wolverton Block.....Spokane
Hardin, E. E.....Bellingham
Hardman, Max, Empire Building.....Seattle
Harmon, U. E., 713-15 Tacoma Building....Tacoma
Harriman, Henry R., N. Y. Block..... Seattle
Harris, Chas. P., Lowman Building.....Seattle
Hart, John B., Am. Bank Building.....Seattle
Hartman, John P., Burke Building.....Seattle
Hartson, M. T., Federal Building.....Tacoma
Harvey, Walter M., Nat'l Realty Building..Tacoma
Hastings, H. H. A., Haller Building.....Seattle
Hathaway, Howard, 309-11 Am. Nat. Bk. Bld.Everett
Hay, W. W., 540-1 N. Y. Block.....Seattle
Hayden, E. M., Perkins Building.....Tacoma
Hayden, W. H., Fidelity Building.....Tacoma
Healey, T. D. J.....Bellingham
Heath, Sidney Moore.....Hoquiam
Heaton, O. G., 339 N. Y. Block.....Seattle
Henderson, Scott Z.....Kennewick
Hendron, Carroll, 701 N. Y. Building.....Seattle
Henley, D. W.....Spokane
Herman, David, 519 Hyde Building.....Spokane
Herr, Willis B., 900 Leary Building.....Seattle
Hibschman, H. J., 823-4 Paulsen Building...Spokane
Higgins, John C., Alaska Building.....Seattle
Higgins, Thos. B., P. O. Box 2193.....Spokane
Hilen, A. R.....Mt. Vernon
Hills, Chas. S.....Seattle
Hindman, W. W., 18 Wolverton Block.....Spokane

Hodgdon, C. W.....Hoquiam
Hodge, G. J.....Seattle
Hoeffler, J. V.....Cle Elum
Holbrook, Paul, 629 N. Y. Block.....Seattle
Holcomb, O. R., Superior Judge.....Ritzville
Holt, R. S., Tacoma Building.....Tacoma
Horan, J. E.....Everett
Hovey, C. R., Honolulu Block.....Ellensburg
Howard, C. W., U. S. District Judge.....Seattle
Howe, James B., Pioneer Building.....Seattle
Hoyt, John P., Federal Building.....Seattle
Hubbard, H. Frank.....Wenatchee
Hughes, E. C., Colman Block.....Seattle
Hughes, H. DeHart, Alaska Building.....Seattle
Hughes, P. D., Burke Building.....Seattle
Hulbert, Robt. A., 901 Alaska Building.....Seattle
Hull, H. L.....North Yakima
Humphrey, W. E., House of Representatives. Washington, D. C.
Humphries, John E., 602 Mutual Life Bldg..Seattle
Huneke, Wm. A., Superior Judge.....Spokane
Hurd, M. P.....Mt. Vernon
Hurlbut, Chas. H..... Bellingham
Hutson, Chas. T., 530-3 Pioneer Building...Seattle
Imus, A. H.....Kalama
Irwin, L. J.....Friday Harbor
Irwin, Mason, Superior Judge.....Montesano
Jacobs, B. F., Bankers' Trust Building.....Tacoma
Jackson, W. H., Bank of Colville Building..Colville
Jeffers, Clyde G.....Wilson Creek
Jesseph, L. C.....Colville
Joab, Albert E., 508-10 Equitable Building.Tacoma
Joiner, Geo. A., Superior Judge.....Mt. Vernon
Jones, Caleb, 511 Hyde Building.....Spokane
Jones, Richard Saxe, Colman Building.....Seattle

Jones, W. L., U. S. Senate.....Washington, D. C.
Jones, L. N.....Arlington
Joujon-Roche, J. B., 661-670 Colman Bldg..Seattle
Kalb, Ernest L.....Kennewick
Kauffman, Ralph, Superior Judge.....Ellensburg
Keith, W. C., Starr-Boyd Building.....Seattle
Kelleher, John, 402 Burke Building..... Seattle
Kelleran, S. H., Assistant Attorney Gen.... Olympia
Kellogg, J. A., Superior Judge.....Bellingham
Kellogg, J. A., Bailey Building.....Seattle
Kemp, Fred .....Wenatchee
Kennan, H. L., Superior Judge.....Spokane
Kennan, S. A., Empire Building.....Seattle
Kennedy, J. Y.....Everett
Kerr, James A., Hoge Building.....Seattle
Kimball, H. L. 1219 Old Nat. Bank Bldg....Spokane
Kindall, J. W.....Bellingham
Kizer, B. H., 1230 Old Nat. Bank Building..Spokane
Kleber, John C., Hyde Building.....Spokane
Korte, Geo. W., 608 White Building.....Seattle
Kreite, Edward C., Alaska Building.....Seattle
Kuykendall, E. V.....Pomeroy
Laffoon, R. F.....Tacoma
Lambert, R. S.....Sumas
Lambuth, W. D., Pacific Block.....Seattle
Lane, W. D., 711-14 White Building.....Seattle
Langhorne, M. A., Perkins Building.....Tacoma
Langhorne, W. W.....Chehalis
Lanning, Will .....Aberdeen
Larrabee, John, 1022 Alaska Building.....Seattle
Latcham, F. A., Fidelity Building.....Tacoma
Laughan, A. J., Zeigler Block.....Spokane
Lavin, Joseph J., Zeigler Block.....Spokane
Lee, Geo. A.....Olympia
Leehey, Maurice D., Alaska Building.....Seattle

Leonard, P. F.....Pasco
Levy, Aubrey, 307 Lowman Building.....Seattle
Leuders, Henry W., Bank of Cal. Bldg.....Tacoma
Lewis, Warren H., 634 Lumber Ex. Bldg.....Seattle
Linck, John W.....Tacoma
Locke, D. W.....Everett
Livesey, George.....Bellingham
Loutit, Geo. W., 18-20 Realty Block.....Everett
Love, C. M. Nelson.....Davenport
Loveday, Walter, Bank of Cal. Building.....Tacoma
Lovell, G. E.....Ritzville
Ludington, R. S.....Wenatchee
Lund, C. P., Old Nat'l Bank Building.....Spokane
Lund, Edna B.....Tacoma
Lund, R. H.....Tacoma
Lung, Henry W., 408 Burke Building.....Seattle
Lyle, J. T. S., Assistant Attorney General...Olympia
Lynch, John H.....North Yakima
Lyons, Chas. S., National Realty Building...Tacoma
Lyter, M. M., New Arcade.....Seattle
Macbride, Philip D., Hoge Building.....Seattle
Macdonald, E. C., Box 142.....Spokane
Main, John F., 1717 Boylston Avenue.....Seattle
Martin, Wm., Collins Block.....Seattle
Mattison, Thos., 408 Berlin Building.....Tacoma
Mathews, John W.....Republic
McCafferty, James J., Lowman Building....Seattle
McCarthy, Joseph, 402 Hyde Building.....Spokane
McClinton, James G.....Port Angeles
McClure, Walter A., 1509 Hoge Building...Seattle
McCord, E. S., Hoge Building.....Seattle
McCormick, W. L., 825 Tacoma Building...Tacoma
McCrosky, R. L.....Colfax
McCroskey, W. E.....Palouse
McDaniels, John H.....Ellensburg

McFadden, Thos. L.....Bellingham
McGilvra, O. C., 418 Burke Building.....Seattle
McKay, T. H., 421-423 Finch Building.....Aberdeen
McMenamin, J. H., Fidelity Building.....Tacoma
McLain, Henry A., Empire Building.....Seattle
McLaren, W. G., Federal Building.....Seattle
McLean, W. E., Empire Building.....Seattle
McLeod, W. A.....Port Orchard
McMaster, Donald, Superior Judge.....Vancouver
McMicken, Maurice, Colman Building.....Seattle
Meade, A. E.....Bellingham
Meier, Walter F., 710 N. Y. Block.....Seattle
Meigs, L. O.....North Yakima
Mendenhall, Mark F., Ex. Nat. Bank Bldg..Spokane
Merritt, H. D.....Spokane
Merritt, J. W., 1224 Old Nat. Bank Bldg....Spokane
Merritt, Seabury, Old Nat. Bank Bldg.....Spokane
Miller, C. E., 3-5 First Int. Nat. Bank Bldg..South Bend
Miller, Chester F., Superior Judge.....Dayton
Miller, Fred, Hyde Building.....Spokane
Million, E. C., Hoge Building.....Seattle
Mires, Austin .....Ellensburg
Mitchell, John R., Superior Judge.....Olympia
Moore, Ben L.....Seattle
Moore, F. W., Citizens Bank Building.....Bremerton
Moore, H. D., N. Y. Block.....Seattle
Moore, W. H., Hoge Building.....Seattle
Morgan, F. L.....Hoquiam
Morris, Geo. E., Supreme Judge.....Olympia
Morrow, W. C., Bank of Cal. Building.....Tacoma
Moser, B. B., Haller Building.....Seattle
Mount, Wallace, Supreme Judge.....Olympia
Munday, Chas. F., P. O .Box No. 1813.....Seattle
Munn, Geo. Ladd, Alaska Building.....Seattle
Munter, Adolph, Peyton Block.....Spokane

Murphine, Thos. F., N. Y. Block.....Seattle
Murphy, Jas. B., Lowman Building.....Seattle
Murphy, John F., 1116 Alaska Building.....Seattle
Murray, Chas. S., Headquarters Building...Tacoma
Murray, F. H.....Tacoma
Murray, S. G., Arcade Annex.....Seattle
Myers, H. A. P., Superior Judge.....Seattle
Nash, Frank D., 500 Bank of Cal. Building..Tacoma
Neal, C. H.....Conconully
Neal, Frank C., Fidelity Building.....Tacoma
Neal, Fred W.....Bellingham
Nelson, Lewis J.....Leavenworth
Neterer, Jeremiah .....Bellingham
Newman, T. G., First Nat'l Bank Bldg.....Bellingham
Nichols, J. W. A., 504 Bank of Cal. Bldg....Tacoma
Noon, Henry S., N. Y. Block.....Seattle
Norris, H. F., 614-16 Fidelity Building.....Tacoma
Nuzum, R. W.....Spokane
O'Brien, C. M.....Pasco
Ogdon, R. D., Colman Building.....Seattle
Oldham, Robt. P., Hoge Building.....Seattle
Onstine, Burton J.....Spokane
O'Phelan, John I.....South Bend
Oswald, Hugo E., 1224 Old Nat. Bank Bldg..Spokane
Padgett, B. E., 322-4 Stokes Building.....Everett
Palmer, E. B., Lyon Building.....Seattle
Parker, Emmett N., Supreme Judge.....Olympia
Parker, Fred .....North Yakima
Parker, John R., Starr-Boyd Building.....Seattle
Parr, H. L.....Olympia
Parr, W. O., P. O. Box No. 56.....Wenatchee
Parrott, Henry W.....Bellingham
Patterson, Chas. E., Bailey Building.....Seattle
Pattison, John .....Spokane
Pattison, Paul .....Colfax

Paul, Frank A., 64 Haller Building.....Seattle
Peacock, John A., Fernwell Building.....Spokane
Peck, H. E., Junction Building.....Ballard
Pedigo, John H., 601-3 Baker Building.....Walla Walla
Pelletier, John H., 615 The Rookery.....Spokane
Pemberton, W. H.....Bellingham
Pendergast, E. K., Superior Judge.....Conconully
Perringer, Virgil .....Bellingham
Perry, John H., 900-6 Leary Building.....Seattle
Peters, W. A., 546 N. Y. Block.....Seattle
Peters, Walter D.....Bremerton
Peterson, Fred H., Hoge Building.....Seattle
Peterson, N. S., 747 N. Y. Block.....Seattle
Phelps, Harry E., 301-2 Bankers Trust Bldg. Tacoma
Phipps, Harve H., 610 Hyde Building.....Spokane
Pickrell, J. N.....Colfax
Piles, S. H., Pioneer Building.....Seattle
Pinckney, John J., Home State Bank Bldg..Blaine
Place, Victor M., Northern Bank Building..Seattle
Plummer, W. H., 1202 Old Nat. Bank Bldg..Spokane
Poe, C. K., 405 N. Y. Block.....Seattle
Post, Frank T., Exchange Nat. Bank Bldg..Spokane
Powell, J. H., 546 N. Y. Block.....Seattle
Prather, L. H.....Spokane
Pratt, Peter L., 734 Central Building.....Seattle
Pratt, W. H., Berlin Building.....Tacoma
Preble, E. B., Superior Judge.....North Yakima
Presby, W. B.....Goldendale
Preston, Harold, Lowman Building.....Seattle
Pritchard, S. J.....Everett
Pugh, Fred C.....Spokane
Quick, J. W., Headquarters Building.....Tacoma
Quinby, Frank .....Anacortes
Radley, F. W.....Bellingham
Ramsey, H. J., 664-670 Colman Building....Seattle

Reading, Harry W.....Metaline Falls
Reed, J. E.....Seattle
Reeves, Frank .....Wenatchee
Reeves, Fred .....Wenatchee
Reid, Geo. T., N. P. Headquarters Bldg.....Tacoma
Reinhart, C. S.....Olympia
Reiter, E. D., 1014-15 Paulsen Building.....Spokane
Remington, Arthur .....Olympia
Reynolds, A. H., 6½ E. Main Street.....Walla Walla
Reynolds, C. A., Pioneer Building.....Seattle
Rhodes, Harry A.....Spokane
Rice, A. E., Superior Judge.....Chehalis
Richardson, W. E.....Spokane
Riddle, C. A., 655 Colman Building.....Seattle
Ridle, W. B., 414 Hyde Building.....Spokane
Rinehart, W. V., 702 Second Avenue.....Seattle
Ritchie, Wm. B.....Port Angeles
Robb, Bamford, 802 Lowman Building.....Seattle
Roberts, J. W., 1304 Alaska Building.....Seattle
Robertson, F. C., Hyde Block.....Spokane
Robinson, John Sherman, 614 Colman Bldg..Seattle
Roche, John H.....Spokane
Rochester, G. A. C., 407 Bailey Building....Seattle
Rockwell, T. D.....Olympia
Rokes, J. A.....Seattle
Romaine, J. W.....Bellingham
Ronald, J. T., Superior Judge.....Seattle
Rosenhaupt, Harry, Hyde Building.....Spokane
Ross, E. W.....Olympia
Rosslow, Joseph, 514 Hyde Block.....Spokane
Rowan, Geo. W.....Castle Rock
Rowland, Dix H., Fidelity Building.....Tacoma
Rowland, H. G., Fidelity Building.....Tacoma
Rozema, Martin, 653-4 N. Y. Block.....Seattle
Rudkin, Frank H., U. S. District Judge.....Spokane

Rummens, G. H., 1308 Alaska Building.....Seattle
Rupp, Otto B., 661-67 Colman Building.....Seattle
Ryan, John E., 1311-1313 Alaska Building...Seattle
Sather, Chas. S., Clover Block.....Bellingham
Saunders, R. C., 408-11 Lowman Building...Seattle
Saville, O. J. Court House.....Spokane
Scott, W. D., 310-314 Fernwell Building....Spokane
Seabury, I. H.....Sedro Woolley
Shackleford, John A., 406 Perkins Building..Tacoma
Shaefer, Geo. W., 608 Hyde Building.....Spokane
Shaffer, C. Will, State Law Librarian.....Olympia
Shaffrath, Paul, 742 N. Y. Block.....Seattle
Shank, Corwin S., Alaska Building.....Seattle
Sharp, R. G., Seattle Electric Co. Building..Seattle
Sharpstein, John L., Baker-Boyer Building..Walla Walla
Sheeks, Ben, Superior Judge.....Montesano
Sheller, Wm. G., 329 Stokes Building.....Everett
Shepard, Chas. E., 614 N. Y. Block.....Seattle
Shepard, Thomas R.....Valdez, Alaska
Shine, P. C., 404-6 Fernwell Building.....Spokane
Shippen, Joseph, 627 N. Y. Block.....Seattle
Shorett, J. W.....Seattle
Shorts, Bruce C., Alaska Building.....Seattle
Simon, Ralph, Pacific Block.....Seattle
Simpson, James M., The Rookery.....Spokane
Slattery, John, Northern Bank Building....Seattle
Smith, Carl J., 554-6 N. Y. Block.....Seattle
Smith, Chas. Wesley, 575-580 Colman Bldg..Wilson Creek
Smith, Del Cary, 26-27 Zeigler Block.....Spokane
Smith, Everett .....Walla Walla
Smith, Sol, Superior Judge.....South Bend
Smith, Winfield R., Alaska Building.....Seattle
Snell, Bertha M., Equitable Building.....Tacoma
Snell, Marshall K., Equitable Building.....Tacoma
Snell, W. H., Nat'l Bank of Com. Building..Tacoma

Snook, Herbert E., Burke Building.....Seattle
Snyder, Edgar C., Lowman Building.....Seattle
Sorenson, N. M., Box 742.....Wenatchee
Southard, W. E.....Wilson Creek
Sparks, W. W., Sparks Block.....Vancouver
Spirk, Chas. A., 735 N. Y. Block.....Seattle
Spirk, Geo. L., 1304 Alaska Building.....Seattle
Spooner, Chas. P., Leary Building.....Seattle
Squire, Watson C., 557-8 Empire Building...Seattle
St. Morris, C. D., 1007 Paulsen Building....Spokane
Stallcup, John C., California Building.....Tacoma
Starkey, A. G., 1021 Paulsen Building.....Spokane
Stedman, Livingston B., Haller Building....Seattle
Steele, E. N.....Olympia
Steele, Sam'l H., 620 Alaska Building.....Seattle
Steell, Howard W., P. O. Box 51.....Colville
Steiner, G. E., Haller Block.....Seattle
Steiner, R. S., Superior Judge.....Waterville
Stephens, H. M., 409 Peyton Building.....Spokane
Stern, Sam'l R., 305 Columbia Building....Spokane
Stevens, Edward B., 309 Bailey Building....Seattle
Stevenson, Loren C., 808-9 Tacoma Building Tacoma
Stewart, Chas. W., 405 Fidelity Building...Tacoma
Stewart, James, P. O. Box 417.....Port Angeles
Stiles, Theo. L., 507 Equitable Building.....Tacoma
Stone, J. E.....Kalama
Stotler, F. L.....Colfax
Stratton, W. B., 734-739 Central Building...Seattle
Sturdevant, R. F.....Olympia
Sturdevant, R. M.....Dayton
Sullivan, John J., Asst. U. S. Dist. Attorney.Seattle
Sullivan, Potter C., 309 Bailey Building....Seattle
Sumner, Sam. R.....Wenatchee
Sutton, C. D.....Port Orchard

Swan, Charles E., Old Nat'l Bank Building..Spokane
Swan, Edgar M., Donegan Building.....Vancouver
Swanson, Carl W.....Spokane
Swindle, Anthony J., 28 N. P. Building.....Tacoma
Tait, Hugh A., P. O. Box No. 1820.....Seattle
Tallman, Boyd J., Superior Judge.....Seattle
Tanner, W. V., Attorney General.....Olympia
Teats, Govnor, Bernice Building.....Tacoma
Tempes, F. W.....Vancouver
Terhune, R. S., 404-6 Boston Block.....Seattle
Thompson, H. R., 212 Pioneer Building.....Seattle
Thompson, Will H., 409 Colman Building...Seattle
Thompson, Howard C., Court House.....Bellingham
Thorgrimson, O. B., 601 Lowman Building...Seattle
Todd, E. E., Hoge Building.....Seattle
Tolman, W. W., 1112 Old Nat'l Bank Bldg..Spokane
Totton, Wm. D., 653-4 N. Y. Block.....Seattle
Trefethen, D. B., 314 Colman Building.....Seattle
Tremper, H. S., 802 Third Avenue.....Seattle
Trimble, W. P., 618 N. Y. Block.....Seattle
Troy, P. M.....Olympia
Truax, John .....Ritzville
Trumbull, F. F.....Port Angeles
Trumbell, John, Am. Bank Building.....Seattle
Tucker, O. A.....Cordova, Alaska
Tucker, Wilmon, 307 Lowman Building.....Seattle
Turner, George, Columbia Building.....Spokane
Turner, L. T., 711 Central Building.....Seattle
Twohy, Edmund P., 403 Peyton Building...Spokane
Udell, Clayton E.....North Yakima
Van Dyke, John B., 812 Lowman Building...Seattle
Vance, T. M.....Olympia
Vinsonhaler, E. A., N. Y. Block.....Seattle
Voorhees, Reese H., 508 Traders Block.....Spokane
Wade, Austin M.....Aberdeen

Wakefield, W. J. C., Peyton Building.....Spokane
Walker, Geo. H., Hoge Building.....Seattle
Wall, J. P., Scandinavian Am. Bank Bldg...Seattle
Warburton, S., House of Representatives...Washington, D. C.
Waller, J. L., 617 Pacific Block.....Seattle
Ward, E. C.....Goldendale
Waterman, Howard, 735 N. Y. Block.....Seattle
Waters, Thos. R.....Bellingham
Watkins, Walter Hugh, N. Y. Block.....Seattle
Waugh, J. C.....Mt. Vernon
Webb, O. T.....Everett
Webster, J. Stanley, Superior Judge.....Spokane
Welsh, J. T.....South Bend
Welsh, W. J.....Roslyn
Wentz, Herman T., 201-2 Bank of Col. Bldg..Colville
Westfall, L. L., 430 Exchange Building.....Spokane
Wheeler, L. H., N. Y. Block.....Seattle
Whitcomb, Walter .....Blaine
White, Ralph C.....Aberdeen
White, H. M.....Bellingham
Whitlock, J. C., N. Y. Block.....Seattle
Whittlesey, Chas., 802 Third Avenue.....Seattle
Wickersham, James .....Fairbanks, Alaska
Williams, Burt J.....Wenatchee
Williams, C. M.....Everett
Williams, J. A., Paulsen Building.....Spokane
Williams, W. M., Assistant Attorney Gen...Olympia
Williamson, Geo. G., Fidelity Building.....Tacoma
Wilshire, W. W., 442 N. Y. Block.....Seattle
Wilson, Harry E., Capitol Building.....Olympia
Wilson, John M.....Olympia
Wilson, Lester, 833 Henry Building.....Seattle
Wilson, Worrall, N. Y. Block.....Seattle
Winders, C. H., Lowman Building.....Seattle
Winfree, W. H., 16-21 Wolverton Block.....Spokane

Woods, Ralph, Provident Building.....Tacoma
Wooten, Dudley G., Pioneer Block.....Seattle
Worden, W. A., Federal Building.....Tacoma
Wray, Wm., Oriental Building.....Seattle
Wright, Edward H.....South Bend
Wright, Elias A., 629-31 Burke Building....Seattle
Wright, Geo. E., 436 Burke Building.....Seattle
Yakey, John B., Superior Judge.....Port Orchard
Zent, W. W., 419-22 Jamieson Building.....Spokane

PRESIDENT'S ADDRESS.

HON. W. T. DOVELL, SEATTLE.

During the year which now terminates, God's mercy having interposed a recess of the legislative body, there have been no new statutory enactments and we are therefore relieved of the duty which would otherwise devolve of analyzing recent legislation. Nor have we any eagerness to discover that judicial decision has rendered necessary changes in the existing law. It is not likely that we shall ever want for those who are fertile in suggestion of modification of the law or new enactments and it is not our purpose to contribute to this tendency. Firmly wedded to the belief that a people is best governed when least governed, we find but little defect in our existing laws save in their amplitude.

As society enlarges and the relations of man to man become more intricate and involved, novel rules for the regulation of human conduct must be, from time to time devised, but it does not follow that all the imperfections of human society and those defects which mar the intercourse between each man and his fellow, may be cured or even alleviated by legislation. Legislation breeds legislation and remedial enactment too often marks the genesis of evil which were otherwise unborn. The individual is born to be free, and absolute freedom he should enjoy, save when harking back to savagery, he requires a check to prevent that he trench upon the rights of his fellow man. Even in a republic such as our, the state may be so armed with authority as to become the most iniquitous of despots, while the individual drags the chains of over-much government. The tendency of the age is toward the formulation of specific artificial laws; laws often unnecessary and which too often bind, oppress and enervate. The making of these laws is generally entrusted to those unskilled in statecraft. In no other vocation is so little required as in that of lawmaking. The dentist may not remove a tooth, the farrier shoe a horse or the barber ply his humble trade before he has demonstrated to authority his peculiar fitness for the work he presumes to perform. But he who exercises the most important function of all, the making of laws which control the conduct of mankind, need have no preparation, need demonstrate no aptitude for the solemn business he undertakes.

For these reasons, we have hesitated to suggest statutory changes or enactments. Bearing in mind that a mere multitude of laws does not spell good government, we shall hesitate to advocate remedial legislation until we are convinced of something more than a fanciful disorder, and surely it is not ultra-conservatism which impels us to

suggest that statutory innovations should only be the result of a seasoned conviction that real evil abides within the established order.

The most noteworthy decision which has been announced by our Supreme Court during the past year is that which upholds the validity of the workingman's compensation act, passed by the legislature of 1911. It is, no doubt, fair to say that in reaching the conclusion it did, our court has gone with a trend which the close observer must allow is inevitable. If it be true that conditions of the modern industrial world are such that the public welfare demands that provision be made for those who are maimed and the relict of those destroyed in industrial pursuits, and that this provision be by direct contribution on the part of the employer, then no doubt our constitution is broad enough to comprehend such an enactment. Perhaps it will be the view of the large majority of lawyers that this decision is justifiable, not by precedent—for it is unprecedented—but justifiable by that rule which allows of a liberal stretching of constitutional limitations, so as to accommodate that instrument to the public welfare. But we may as well understand that if enactments of this character are to be upheld, enactments which propose to take, without judicial sanction, the property of one for the benefit of another, we must prepare ourselves to accept a different definition of due process of law from that with which we have been made acquainted during the last century of American jurisprudence, and we may as well divorce ourselves from the idea that the limits within which, and the rules according to which, we may be deprived of our property are defined by any laws or usages or customs which existed at the time of the creation of American institutions or the adoption of our constitution.

Place this decision of our court along side that of the New York Court of Appeals in the Ives case, where a directly opposite conclusion is reached, and it cannot be denied that while the logic of the latter decision seems more coldly accurate, measured by the familiar rules, it is perhaps less candid and convincing. The evil of this decision of our court of which we speak, if there be evil in it at all, lies in its potentiality as a precedent, for since its rendition and since the decision of the Supreme Court of the United States in the Oklahoma banking case, the bewildered student of constitutional law finds that he is without a datum to which he may tie.

As for the enactment itself, brought about as it was by a popular demand, it is to be hoped that for humanity's sake it will, in its operation, be able to defy all the rules of logic and nevertheless accomplish that beneficial end for which it was designed.

Before we leave the subject of legislative enactment and lest we be thought to be unappreciative of the great work performed by the legislature or inattentive to the charge which is laid upon us by

the rule to comment upon recent legislation, we will make a single reference to a most important enactment of the last legislature, being Chapter 115 of the Session Laws of 1911, whereby it is made a misdemeanor for any judge of a court, *not of record*, to address a person "in unfit, unseemly or improper language." One can well imagine the legislator who framed this act to have suffered under the unsympathetic comments of some unresponsive justice of the peace, who not only declined to make his judgment consist with counsel's contention, but in addition thereto, laid upon him a heavy tongue. But is it not expedient that this act be amended lest some of the judges of the higher courts, discovering that under the maxim, *expressio unius exclusio alterius*, they are without the inhibition of the act, might feel free to direct toward us an expression of the unflattering sentiments they must oftentimes entertain.

Gentlemen of the Association, it is with the deepest regret that I feel bound to express a realization of the fact that the bench and bar of America is to-day laboring under a heavy burden of criticism. To bitterly deplore this criticism and to resent it is the instinctive attitude of every lawyer who merits membership in this profession, but this will not advantage us nor will it serve to stay the hand of brutal disapproval which strikes at our ideal. While we do not hesitate to believe and to declare that the current disparagement of the bench and bar is most unfair, it is nevertheless our duty to meet it candidly and to search our conduct to the end that we may discover what, if any, warrant we have furnished for the criticism which is so generally leveled at us.

Let us therefore consider, in such order as we may, some of the complaints that seem to have engendered the present popular sentiment. First, let us consider what is popularly termed the law's delay. That delay in the termination of litigation has been a favorite complaint, we are all aware. Each of the two great political parties, in its national platform of the present year, has declared in favor of legislation which will prevent this so-called evil. The practitioner in the State of Washington finds it difficult to interest himself in this complaint because we realize that in this state at least but one thing can prevent the speedy termination of litigation and that the dilatoriness of counsel. As we are advised, there is probably not a court of our state where final judgment in the first instance may not ordinarily be secured within a period of three months after the initiation of the action, and if an appeal be prosecuted, it is only in the rarest instance that final determination of the cause, provided, that it be diligently prosecuted, need be postponed for a longer period than six months thereafter. Surely the law's delay may not be cited as an abuse in a state where the end of litigation may be annnonced, even after appeal to the high-

est tribunal, within a year from its initiation. In our state, the legislature has been generous in making provision for a sufficient number of trial judges to prevent congestion and we are fortunate in having a Supreme Court, the members of which are habituated to the most remarkable industry. It is our observation that in most of the states the practice has been so simplified that the old rules which at one time furnished a means for the interminable protraction of litigation, have been abrogated, so that we may conclude that in those states where great delay is encountered in the determination of causes, the fault resides with a legislature which has provided an insufficient machinery for the transaction of business presented.

Enormous as is the amount of business transacted by American courts, we are nevertheless not willing to assert that they are generally conducted without a great waste of energy and it is our belief that to prevent this waste is the first great reform in the practice to which the efforts of the American lawyer must be addressed. If one who has never given the matter thought will take the trouble to read the verbatim report of a trial in an English court and read with it a like report of a similar case in one of our courts, he will understand the character of the waste to which we refer.

We are mindful of the fact that a reference to foreign models is apt to be resented, but inasmuch as we took the whole body of our law from England, and were just as slavish as we were fortunate in the imitation, it is believed that it is not entirely out of character to suggest that there might be profit in the imitation of some of their practices.

Is is not a fact that the advocate too often abuses the indulgence which is granted him in the trial of causes in American courts? And is it not a fact that this practice has prevented the layman from possessing that idea of the dignity of court proceedings which it is our desire he should have? Is it to be wondered at that when proceedings occur in the trial of a cause which do not consist with the ordinary man's idea of common sense that man will lose his respect for those proceedings and likewise for the officers of the court who conduct them? Our methods may have the sanction of long established custom and thus entrenched, we may fall into a complacency which prevents us from realizing that there are many of our practices which appear to the ordinary man to be ridiculous and which are indeed absurd.

To be more specific, consider the latitude which is ordinarily permitted and taken by counsel in cross-examination of a witness. What visitor to any of our court rooms, where a trial is in progress, has failed to observe the tediousness, the inutility and the utter absurdity of cross-examination in the average case? Industrious and conscientious counsel has apparently been educated to the notion that it is his

duty to search with minuteness the mind of each opposing witness and to turn every stone upon the hillside in order that he may discover if there be anything concealed beneath, though he have no reason whatever to believe such concealment has been made. And so he protracts an interminable catechism which, adding not a whit to the enlightenment, contributes only to the weariness and confusion of the triors of the cause.

Scarcely less excusable and hostile to all reason is the method permitted in many of the courts in the examination of jurors touching their qualifications to try the cause. We read the report of a case of large importance in a neighboring state, where some eight weeks are consumed in obtaining an incomplete panel and the trial is then halted upon it being made to appear that there is reason to believe that distinguished counsel has endeavored to advance the interests of his client by bribing a prospective juror. Perhaps the commission of the latter offense could not have been prevented, but one cannot avoid the impression that the judge who, under any practice act, permits the expenditure of such a length of time while counsel tediously toils with an investigation of the minds of prospective jurors is not making the proper effort to prevent the trial from becoming farcical.

Counsel will offer and with apparent ingenuousness, the court will receive the testimony of expert witnesses given in answer to a hypothetical inquiry devised with such diabolical ingenuity as to make it quite non-understandable, when it is comprehended clearly that the witness is merely swearing by the emolument he has received and making his testimony fit the requirements of his employer. If the ordinary man who is not learned in the law, fails to discern the wisdom of such customs and because he cannot make them correspond with his ideas of good sense, becomes critical of the courts and lawyers, are we to blame him utterly? Is it not rather the duty of the lawyer to hasten reform, as nearly as practicable, to the point where no practice will exist which we find ourselves unable to defend?

Legislation touching the conduct of the courts is generally to be abhorred, for theoretically at least, it is unnecessary and a trespass by one department upon another, which was designed to be independent. The remedy for such evils, as the preceding remarks were designed to suggest, may come from the courts and lawyers themselves and will perhaps be accomplished when we are more awake to some of the absurdities into which we are prone to fall.

It will be at once observed that there can be no radical departure from what I have been bold enough to suggest as some of the absurdities of our practice, without the assumption of greater authority by the court in regulating the conduct of trials. It is this assumption of authority in the English Courts which makes possible a practice in

which we find so much to commend and which has undeniably the effect of resulting in a more sensible disposition of business.

But here occurs the very obstacle in the way of progress, an obstacle which will disappear only when the people shall devise some method which will guarantee us judges who approach the character of those who preside in English tribunals. There, judges are appointed by the Crown, generally for a life tenure. They are paid a large compensation and they are invariably chosen only from amongst those who have demonstrated their integrity and learning at the bar. In our country, a different rule obtains and probably must always exist. It is quite unlikely that many of the states will ever depart from the rule of choosing judges by vote of the people, nor would we suggest it, for there are those of us who believe that peril lies in a judiciary which is not, with some degree of proximateness, responsible to the people, and there is much justification for the belief that there is more danger in a judiciary, except perhaps in the case of judges of the higher courts where promotion is not expected, which depends for its tenure upon the favor of the appointive power than there is in a judiciary which depends for its selection upon the body of the electorate. Whether with or without sufficient justification, the view is generally held and is no doubt growing stronger that judges who hold for a life tenure are prone to diminish their idea of responsibility to the people and are apt to lose the proper sense of proportion between the office they hold and the people's rights.

It is therefore quite unlikely that the method in vogue in most of the states of electing judges by popular vote will be soon departed from. In a state like ours, where a meager salary is paid and judges are selected by the direct primary, it is not likely that the tendency will be toward the elevation of the judiciary. If the direct primary law, as applied to judges, remains in force, the prophecy is safe that the character of the judiciary will tend to degenerate. Indeed, one shudders to realize that men have during the present year, declared themselves as candidates for judicial office in this state whose very candidacy is a profanation of the office to which they aspire.

As applied to administrative offices generally, the plan of the direct primary whereby officers are chosen directly by the people, who, of necessity, must be without a proper comprehension of the qualification of candidates, is comparatively harmless and will probably never contribute materially to the destruction of our institutions, because except as regards the highest offices, it makes but little difference who is chosen to perform a service for which no technical knowledge is required and which can generally be deputed. A judical officer, however, can delegate the performance of none of his functions and he must possess an especial equipment. Because of a necessary

lack of information in the premises, the people cannot properly determine, in the first instance, the question of his qualifications, and therefore to permit the choice of judicial officers to the vagarious impulse of the voter, without the intervention of any form of assembly where deliberation may be had, is as perilous as it is illogical.

We have endeavored to indicate that those reforms which the people in their present impatient and critical temper are demanding of our profession, can be best effectuated, perhaps can only be achieved, by elevating the standard of the bench; yet those very people in their thoughtless impulse for a miscalled reform, have conspired to make our efforts futile. At the last session of our legislature, a bill passed by the lower house and designed to deprive the courts of power to punish for contempt, committed without the presence of the court, was defeated in the senate by a narrow majority. Our legislature also declined to include judicial officers amongst those who were made liable to recall; thus it may be said that, to this extent, at least, our state has halted in the general trend toward the degradation of the bench.

There exists a popular impression that because of imperfection in the practice acts, or the administration thereof, the offender against the law is too often able to escape, or, in any event, unwarrantably postpone merited punishment for his crime, and it is this belief which is responsible for a portion at least of the criticism of lawyers and the law. The people often evidence a certain element of bloodthirstiness which is impatient of any halt between the crime and the gallow's tree. This is not a novel impulse; it was strong in the days when the Roman republic was verging closely towards its ruin. Says the historian.* "Something like a reign of terror prevailed in the law courts. Cases were hurried forward with peremptory haste; the most garrulous of advocates were sternly silenced; and all the authority of the dictator was used to secure a condemnation. * * * It was no time for lawyers' scruples. Rome needed something more thorough than rose water surgery. Such was the talk of the day."

We do not hesitate to declare that any impression that the justice which is under the present practice meted out by the courts to offenders against the law is lax or unwarrantably slow-footed, is an erroneous one. Indeed, there is much warrant for the belief that the liberty and life of the individual (the sacredness of which none may deny) is in many instances but lightly regarded. We of the profession at least realize that the day is long past when the culprit could escape the halter by resort to some sheer technicality and if rare instances are noted where justice is thus defeated, they do not disprove the generality of the rule. It is probably a fact that the ancient maxim that innocence of the accused is to be presumed has been

* Ferrero's Greatness and Decline of Rome, Vol. II, page 146.

abrogated and in practice the contrary presumption is generally indulged. Instead of there being, as some men believe, a disposition on the part of appellate courts to reverse for error, there is to be observed a growing inclination to avoid reversal in criminal causes, if some plausible excuse for doing so can be discovered. Indeed the ingenuity of courts to at once reach an affirmance and avoid a seeming violation of fundamental rules is often sorely taxed. Heaven pity the man who sits upon the prisoner's dock. Nor is it the weak and defenseless accused alone who stands in peril of being foredoomed. In the present temper of the people, the very possession of great wealth in a certain character of cases often preconceives the guilt of the accused.

Observe the operation of the machinery of government by officers whose sinister ambition is to secure conviction by any means, that they may thus demonstrate efficiency to their superiors, who, in turn imagine that their merit will be measured by the number of those whom they have made to feel the penalty of the law. Observe judges sometimes found to give their aid with all the zeal of a Lord Jeffrys to the end that the government of which they deem themselves a part shall prevail. Observe the insidious growth of state and federal bureaucracy and its arbitrary assumption of power; and he who has imagined that the law is being robbed of victims it deserves may well disabuse his mind of this impression and rather wonder if the liberty of the subject is always as secure as tradition has made us believe it is or as fairness demands it should be

What just man is there who will not shudder at the information which has been lately given out by meager press reports that in the federal court within an adjoining state, men of worth and supposedly high character, have been convicted of crime through the machinations of representatives of the government who did not hesitate to manufacture evidence and intimidate jurors? And who will not rejoice that the chief magistrate of the nation is so true a lawyer and so just a man that he did not hesitate by the exercise of his pardoning power, promptly to annul a conviction secured by means so foul.

The position which the lawyer occupies in organized society demands that he at all times demonstrate the most exact integrity and when an individual member of the profession fails in this, the dereliction is generally accepted as a reflection upon the entire fraternity. We have such confidence in the high, ethical sense of the large majority of practitioners that we feel reflection may be invited upon some of the faults of the members of the bench and bar without discrediting the profession as a whole. It is not our purpose to present a trite homily upon the rules of conduct, but it is at least excusable upon an occasion of this kind to invite a recurrence to

those essential rules which may not be even occasionally violated without casting us into popular disrepute.

Offenders in the legal profession are generally from one of two classes. They may come from the class of those, who, being impatient at the tardiness of results or what they esteem to be success, are tempted to adopt a shorter and less legitimate method than good morals will allow; or they may come from the class of those who, having secured recognition of their talents, are willing to prostitute them to the service of men who plan violation or evasion of the law. Which class is the more discreditable we cannot say. One of the first class is the more to be pitied because he always learns, though often too late, how utterly profitless, even from a material point of view, is the slightest departure from those high and exact standards which the lawyer must understand and adopt as his constant guide in the practice of the profession.

Much evil has been wrought to American institutions and infinite discredit has been reflected upon the profession by lawyers who have been willing, for large rewards, to place their skill and ingenuity at the service of men and corporations who saw no guilt in evasion of the law if it could be accomplished with immunity to themselves. The vulgar notion once obtained that some laws were merely enacted for the purpose of being avoided and the service of ingenious counsel was demanded for that purpose. During the past decade, however, it has been demonstrated with a fair certainty that evasion of the law, even by those who sit in high places or the interests which possess the greatest wealth and power, is attended with a real peril, and it is believed that that counsellor will be found to be of the highest value who will relentlessly refuse to prostitute his skill, but shall at all times direct his client toward a conscientious observance not only of legal forms but of the very spirit of the law itself.

That high place which lawyers as a class have held in American life will never be forfeited save by our own acts. There may be, as no doubt there is today, a measure of distrust, but this unfaith will surely vanish as we maintain a strict adherence to those ethical principles which every man must learn as he learns the law. No student ever obtains a true conception of the law until he has become imbued with those everlasting moral rules which have been "graven by the finger of God upon the heart of man." It is their observance which will guarantee to us the people's faith.

There never was a time in the life of our nation when courts were free from criticism and he who takes alarm at the present tendency may read to his comfort various chapters of American history when criticism was far more violent and bold than it is today. The exercise of those plenary powers with which courts are armed under

our form of government is well calculated to throw them at times into popular disfavor. While this condition is inevitable, it requires that the expression of courts should be made to run as little counter as is necessary to popular opinion. We will not be understood, of course, as even suggesting that heed should be paid to common clamor or to vulgar demand, but inasmuch as the permanency of our institutions depends eventually upon the esteem in which they are popularly held, a decent concession should be made on account of accepted views. Perhaps our meaning may be better explained by an illustration. The most noteworthy decision of many years is that rendered since our last meeting by the Supreme Court of the United States in the Standard Oil case. There, a corporation was charged with a violation of a law which forbids any combination in restraint of interstate trade or commerce. No difficulty was encountered in determining that the assailed corporation fell within the letter and the spirit of the inhibition and here the decision might well have been closed with a pronouncement against the defendant. The writer of the opinion, who speaks for the majority of the court, attempts by vagrant discussion to demonstrate that Congress intended to prohibit such combinations only as were *unreasonably* in restraint of trade. One cannot avoid the conclusion that the writer of the opinion was tempted into the digression by a desire to vindicate the views which he had expressed and which had been rejected by a majority of the court in the Trans-Missouri Freight Association cases, decided some years before. Whatever the purpose, the reader is left with the impression that the court has written into the statute a word which Congress and indeed the court itself, in a previous case, had expressly declined to include. Now, if there is one idea which is popularly accepted and properly so, it is that the court has no power to add or take away a word from a plain legislative enactment and the thought we mean to suggest (and we do it with a full sense of our immodesty in criticising so great a tribunal) is that it was far more important that this popular idea should not have been disturbed than it was that any member of the court should obtain vindication of his views by an expression which was not necessary to a determination of the cause. Clearly enough, the court did not intend to modify the law as the Congress had enacted it. Such a presumption we cannot, of course, indulge. The act does not forbid all combinations, nor does it pretend to reach all combinations *affecting* interstate trade. It is only those which *restrain* which fall within the inhibition. A combination may affect, divert or interfere with trade or commerce and plainly it is not for that alone forbidden by the act. If it eventually restrain, in a material degree, of course ,trade or commerce, it is unreasonable and is prohibited. If it does not so restrain, it is reasonable and is not prohibited.

If our recollection serves correctly, it was Carlyle who warned of the danger in writing all one could on a subject, and this is an admonition which might well be heeded by those who write judicial decisions. We will recall the fact that those announcements contained in the opinion of the Supreme Court of the United States in the Dred Scott case which threw the nation into such terrible turmoil were unnecessary and were only made because the chief justice had been tempted to avail himself of that opportunity to express his individual political views. How few are the written opinions of the American courts concerning which we cannot say that abridgement would make for improvement and how frequent are the announcements unnecessarily made which afterwards rise to haunt the court and confound the practitioner.

We are confident that we shall give no offense to any of our auditors, for surely it will not be suspected that any of the judicial officers who have honored us with their presence here possess any of the failings upon which we comment. But we feel bound to suggest that judicial opinions would be improved if the framers observed a stricter impersonality. With all proper timidity, we venture the assertion that generally speaking no one has, except as it affects the issue of the case at hand, the slightest interest in the personal opinion of any member of the court and we had much rather observe that a case has been rightly decided than we would to give ourselves concern over the question of whether or not there has been absolute uniformity in all the statements of the court or judge who writes the opinion. The efforts which courts will employ in an endeavor to escape the imputation of inconsistency sometimes approach the ludricrous, and reluctance to admit error has been a fault common to judges, a fault which has always tended toward confusion. Inconsistencies and misstatements of the law are bound to occur in the reported decisions of any court and would not a frank admission of the error be fairer than the labored attempts to reconcile and distinguish which cloud so many pages of the law reports?

History forbids that we may avoid the conclusion that the lawyer will always exercise a controlling influence over political action and will eventually mold the form of any government. We make the assertion with the assumption of no arrogance for our profession, but we venture to declare that otherwise than with the help of those who are learned in the law, no constitutional government will be long sustained, and if radicalism shall ever accomplish disintegration, it will be the lawyer's task to plunge into the chaos and rescue the elements of constitutional liberty.

Nor does it require a suggestion that the prime equipment for such a task must be the possession of a generous and unselfish patriotism.

He will, however, be altogether insufficient for the task if patient study has not gained for him a more thorough conception of the logic of our institutions than is often possessed. Everywhere we hear men speak glibly of an impending transition. Is it not possible that we have failed to comprehend the import of the change and have not bethought ourselves that in the history of nations a departure from the established order has presaged destruction more often than progression? In the present era and in the present trend, is there entirely lacking evidence of that mental degeneration to which a certain modern philosopher* refers when he says, "There is a sound of rending in every tradition and it is as though the morrow would not link itself with today. Things as they are totter and plunge. Views that have hitherto governed minds are dead or driven hence like disenthroned kings and for their inheritance they that hold the titles and they that would usurp are locked in struggles. * * * False prophets arise and dominion is divided amongst those whose rod is the heavier because their time is short. Men look with longing for whatever new things are at hand, without presage whence they will come or what they will be."

It is not to be allowed that men would view the impending assault with such complacency if they had fair comprehension of its meaning. It would seem that the very primer student of the subject would comprehend first of all that constitutions are functionless except as they operate to preserve the minority from the invasion of the majority. Yet it is undeniably the fact that the present proclamation finds general favor that the popular will is the supreme law of the land.

Tyranny assumes various forms and in the history of mankind, has appeared in many guises. There was once the rule of might whereby he of the strongest arm might oppress his fellow at his will. Once there was the belief accepted of the divine right of kings to rule and a meek submission to their despotism. Now in the day when we had believed that enlightenment was so general and civilization was so far advanced that the natural rights of man might be preserved, tyranny approaches again in the form of an apotheosis of the majority.

We know that we shall not today induce popular approval by the declaration that the will of the majority is not controlling, and indeed in the present day nothing more is wanting to cast one into disrepute than the charge that he would thwart that will. The doctrine that mere power of numbers is, and of right should be, supreme is nevertheless the falsest shibboleth of all, and unless men come to realize its essential error, we ourselves may live to see the destruction of natural rights and the end of constitutional liberty. Let that giddy

*Max Nordau's "Degeneration," page 5.

dogma carry on to where it must inevitably lead and we may well adapt to ourselves the poet's prayer,

"Keep it ours, O God, from brute control,
O statesmen, guard us, guard the eye, the soul
Of Europe, keep our noble England whole."

If I maintain a right and two others or ten thousand others would deprive me of it, am I bound to yield? Is the trespass upon me the easier to bear because it is committed by the many rather than the few? When the crass doctrine is asserted and stupidly accepted that property or liberty or life may be taken by plebiscitary proceedings as a substitute for process of the law (and that is the naked meaning of the recall of judicial decision) is it not time that the cry should be sounded which shall gather to the defense of the republic all those who revere and likewise understand what constitutional liberty means, that they may consecrate themselves to the task of demonstrating that this is not and never was, in the true analysis, a government by the people, but is and if it shall survive must ever be a government under constituted law.

This then shall be the lawyer's sternest task—to prevent a misconception of our institutions and its consequent disaster—to touch, as with Ithuriel's spear, the squat toad of error and show its truthful form. He will be powerless in this undertaking who does not arm himself with integrity and patriotism, too, for when we cease to demonstrate those qualities we quickly lose the faith of those to whom we must appeal.

We shall not set our face against any true reform, nor shall we permit a smug conservatism to blind us to the fact that modified conditions and necessities of society shall require from time to time an abandonment of outworn rules. Nor shall we front a change in fundamental law when the matured judgment of the majority shall demand it; but as we have the light to understand and the strength to combat, we shall contend for those primary principles, lacking which, a constitution is but a rope of sand and order has resolved itself to chaos.

SHOULD THE CONSTITUTIONALITY OF STATUTES BE DETERMINED BEFORE THE LAW GOES INTO EFFECT?

HON. W. W. BLACK, EVERETT, WASH.

This paper has been prepared simply for the purpose of directing the attention of the bar to some evils which I believe attend our present procedure in the matter of determining the constitutionality of statutes and to merely suggest a remedy without attempting either an exhaustive discussion or to give exact details as to the remedy proposed. Under our present procedure the constitutionality of a statute is not determined until the question is presented to the courts during the course of actual litigation. Very frequently this occurs many years after the enactment and after men have conducted their affairs upon the theory and with the belief that the statute is the law of the land.

By way of illustration, I call your attention to a diking and dam law passed some years ago in this state with which no doubt you are all familiar. A number of districts were formed by virtue of the statute and large improvements and expenditures were made, warrants were issued in payment, assessments were made upon the land in the districts to pay the warrants, some property owners paid and others, usually the large owners, did not, and when proceedings were instituted to compel those in arrears to make payment it resulted in the supreme court declaring the statute unconstitutional.

It followed that the warrants were void, the taxes paid could not be paid back to those who were trying to obey the law by paying their assessments, and those who contested were freed from making any payment on account of the improvements, thus doing great injustice to the contractors or those holding warrants and to law abiding citizens who paid their assessments. Many thousands of dollars were lost in this instance.

Every lawyer can recall many instances of like character where much greater injustice and embarrassment to business men and others have been brought about in the same way where citizens have been endeavoring to obey the law.

Our present system makes the law absolutely uncertain not only to the layman but to the lawyer and judge.

If it were possible for one to always get the advice of the most learned lawyer or the wisest judge he could not even then be sure, as cases are frequently decided by a divided court when the minority may be considered the wiser by both the laity and the bar. This uncertainty of the law has caused great unrest and uneasiness among

the masses and in my opinion is one of the causes for the severe criticism of the courts and of the disrespect for law in recent years.

Frequently laws intended to benefit the people and curtail the greed of great and powerful corporations after many years of litigation are declared unconstitutional to the great advantage of the corporations, frequently leading many to believe that such decisions were made by reason of the powerful influence o fthe litigants. All this leads to great disrespect for the courts and the law and uneasiness among the masses.

Business men are harassed and embarassed; business is some times interrupted or brought to a standstill from the uncertainty as to what is lawful. Business men want to know what they can do and what they cannot do under the law.

Certainty as to what the law is is sometimes as important as wise laws. While this uncertainty usually works greater injustice to the poor and the weak than to the wealthy who can afford litigation, it also works great hardship upon those engaged in large business affairs and sometimes halts large enterprises beneficial to the country at large.

Some have proposed to abolish this evil by not permitting the courts to declare laws enacted by the legislature to be invalid as is the case in England and in nearly every country in the world. Others like Theodore Roosevelt believe that this evil can be cured by recall of decisions which will have the effect of allowing the people themselves to settle constitutional questions.

It seems to me that either of these methods would in this country have the effect of annulling the constitution and would destroy constitutional government, as we understand it in this country. The ordinary legislator would pay much more attention to whather he wanted the alw enacted than to whether or not it were constitutional. If the constitutionality of a statute were referred to the people by recall of decisions the voter would be more likely to be governed by whether he approved or disapproved the law than be governed by whether he thought the law were constitutional or not constitutional. In either case the safeguards of a written constitution would be destroyed.

For my own part I believe:

1. In constitutional government. That is a government in which a written constitution is the supreme law of the land.

2. That the court is the proper body to construe and interpret the constitution as well as the statutes of the state.

3. I favor such statutory and, if necessary, constitutional amendments as will require statutes to be submitted to the supreme court upon their passage and which statutes shall not go into effect until

such court decides that such laws are constitutional and such decision should be irrevocable even by the court. When a statute thus went into effect all would know that it was the law.

It may be urged that if this course were pursued that the courts might overlook some technical objections to the law that might under our present method be discovered. This is to my mind an advantage rather than a detriment for if trained judges learned in constitutional law cannot by a painstaking examination discover that the law is in conflict with the constitution it would probably not be a law which the makers of the constitution intended to prohibit. This could be guarded against, if thought necessary, by allowing all persons interested to be heard summarily.

It may be urged that this method would take too much of the time of the court but, as in the end the court has to decide these questions in the course of litigation now, it would take probably less time then the present system; but if it took more time the probable loss of time to the court could not be considered in comparison to the gain to the people in being sure as to what laws governed them.

Certainty as to the law is necessary in a stable and well ordered government and the method proposed would tend to certainty.

I know that the method proposed has been adopted in part in some states. The chief difference, as I have been informed, is that the decision of the supreme court is not final; the supreme court in some instances having reversed the decisions first rendered. Of course this still leaves the law uncertain. In my opinion the decision of the supreme court that the law is constitutional should be irrevocable and the court should have no power to reverse such previous decision as certainty is the aim of the method proposed.

THE INITIATIVE AND REFERENDUM.

HON. W. C. BRISTOL, PORTLAND, ORE.

Magnifying the importance of politics at the expense of matters more immediately essential to the country's welfare, is the striking present error of our national life.

Presently other nations of the world are and have been internally disturbed with strife bearing upon social economic relations; and, viewing the secret machinations of our own people lately apprising us, it is evident that the caldron of discontent is in a state of ebullition. The causes assigned for some of these things—high cost of living, financial tension, abandonment of fundamental political ideas, the institution of new and untried schemes of government, new dogmas and theories calculated to bring relief, failing in usefulness because of the disorders in the public mind fostering political uncertainty, clashes between capital and labor, coupled with opposition and dissatisfaction with the whole social order of things,—are at least prevalent and clear enough to convince any thinking man that there are preblems of serious import confronting the American people that demand a readjustment to national institutions and relations which heretofore we have been accustomed to rely upon through many years of severe national experience.

But approaching these affairs with new and untried dogmas and theories is very far from finding effective relief.

Those who have seen no corresponding rise in earnings to compensate for the increased cost of existing imagine they have grievances against business. In fact, the belief is that the large combinations of capital and resulting monopolies oppress them. In this an excuse is seen for political agitation. But this forgetfulness of the American people disorders the public mind to such an extent that they fail to see that this political agitation, extending now over a lifetime, has done absolutely nothing to lighten the burdens which they think they bear. And it is a fact that can be demonstrated to the satisfaction of any reasonable man that the collusion of politicians with certain kinds of business has tended to increase the burden which the small wage-earner has been compelled to carry.

The remedy for such a condition certainly does not lie in quack nostrums and untried expedients. The obstacles to active and prosperous employment and the relief from the waste of time must be considered. Political agitation, therefore, without beneficial results or a well reasoned or seasoned end, is unquestionably one of the main obstacles. Ask yourself whether the politicians of the country can have the same grievance against its commerce that is commensurate

with that that all commerce is justified in having against politics.

Upon this situation is forced the belief that the remedy for every consequence of disobedience of natural or moral law lies in some new rule or regulation said to express "the will of the people." For nine-tenths of the errors of ignorance and defective experience American people seem bent to assert their whims by enacting twenty-tenths into so-called law. The designed remedy, viz., to regulate human conduct, grasps the mind but the cause of the disease remains untouched.

Thus we have the reasons that brought forth that benign process of government called *the primary, the initiative and referendum* and *the recall.*

Instantly amongst us these are causes requiring consideration and we take pause. What of the subject?

We as a nation have become notorious procrastinators. For instance, we agitate the country and waste our time conducting a primary for the selection of persons who shall hold office. We then place independent candidates in the field, and we then subject both of these situations for choice to the whole country and a further confirming election. Finally, if the Congress or the State Legislature, as the case may be, does not have to correct, or itself exercise its prerogatives as to, the right of the candidate to hold office, the successful one is finally inducted. To follow the instance, we will take a president. For the first year we subject him to the study and acquaintance of his office; for the second year we require him to make use of that knowledge and gain the experience of an administrative whip with the Congress of the United States and if he ever reaches any efficiency at all at the end of the second year, we interrupt it by the laying of the groundwork for a campaign in the third year, which must culminate the fourth year in a sky-rocket and comet-like tour of the country in a whirlwind campaign for popular approval of the few months of actual administration. This inordinate, exhaustive and unnecessary waste of time cannot be justified upon any plea that it is for the public interest or welfare.

All of the subjects which ordinarily are encompassed within a political campaign have at this time been thoroughly seasoned, discussed and threshed out under the very much deprecated convention system.

If the American people cannot or will not learn by their many experiments and mistakes, we as a nation are certainly in a bad way. Our late conventions at Chicago and Baltimore should teach us something and by them we ought to learn. When to the experience of these conventions, however, is added the months of unrest and disquietude coupled with the strife and struggle of primary nomination,

the substantial interest of the country has good right to protest. Each recurrent two years, and certainly every four, we are thrown more or less into a vortex of political calamity, where millions of capital and vast quantities of work lie idle and unproductive, awaiting some ephemeral result that is expected to come from an uncertain political influence to quiet the mind, produce confidence and again set things in motion. The American people are altogether forgetful.

More profitable employment of time can certainly be had with the incubus of politics removed. A postulate, indeed an axiom, of public conduct should be that the business of the country be preserved free and independent of the result of elections at any time.

It may be set down as true that if we are to have, as an instance, presidential primaries, we do not need nominating conventions. On the other hand, if the old convention system maintains the best form of government in selecting the best man, it may be set down as likewise true that the presidential primary has proved itself an admitted failure. As a matter of fact, the illustration is before us this year that it binds no one; that at least prominent individuals, created by our fetich worship heroes of the world, do not consider themselves bound by it, and no one can examine the fluctuation of public opinion without realizing that the power of the party boss is as great as it ever was, and that in the times which precede the election his influence is not removed by either the initiative or referendum or the so-called expression of the popular will in the primary nomination. You still have to deal with that silent voter who is unheard at the primaries and who ultimately decides the issue. This same voter, however, cannot be expected to qualify as an expert statesman, nor in the average sense be able to digest the political expediency of the various nostrums which are put out year by year under our systems as we now have them for the relief of conditions. The original intention of direct legislation was to accomplish a checking and governing influence over inordinant and undigested legislative measures filling the statute books without any effective purpose. But have we made it play that part, and does it play that part?

At the present time there is no limitation to the number of measures that can be submitted to an electorate by the initative and referendum process in any given election. There is no measure or method by which experimenters, faddists and busybodies are prevented from usurping all of the places on the ballot and giving voice to all of their nostrums. In other words, the initiative and referendum, coupled with the primaries, originally designed to take care of the active public interests and have the backing of the substantial men of the country, have demonstrated that there is no active public interest nor this backing. All the faddist has to do is to obtain the necessary

money at his command and employ petition shovers to work among the ignorant, careless and indifferent citizens to force considerations of his measure. For instance, in Oregon it is a notorious fact that we have a company of delvers in this system who are backed by an eastern concern that pours money into the State in order to enable these people to foist upon our citizenship every character of brain antics that a crazy mind can conceive and put these things in the form of measures to become law. The original idea of corrective influence of the expression of the will of the people has degenerated into the origination of all kinds of mental pelf to take the form of measures merely for experiment and to try out the effect upon the public dog. There is no chance for the man who would vote intelligently to learn, for instance, on which one of the 8 measures to apply his intellect that this year are before the Oregon people on the subject of taxes, to say nothing of the responsibility of passing upon 28 other measures equally involved, besides in special counties 9 tax laws or amendments to digest in addition to those mentioned. There is enough in the taxation measures alone to engage the capacity of a learned and experienced economist in public affairs until well after the election in November. It may interest you to have a statement in brief of some of the measures and the character of them that will be on the ballot:

An amendment repealing the amendment which now gives the people sole power to regulate taxation and exemptions, and permits county tax rule.

An amendment permitting state and county to levy and collect taxes on different classes of property, to accomplish, if you please, two distinct methods consisting of state and local taxation.

An amendment requiring that all taxes shall be uniform on the same classes of property.

An amendment providing for the taxation of incomes.

An amendment exempting from taxation all household furniture, clothing and other non-productive personal property.

An amendment establishing single tax, to be accompanied by a graduated tax on land holdings, franchises and that class of property.

With these are some bills, as follows:

A bill exempting from taxation mortgage notes, credits and bills of exchange.

A bill revising the inheritance tax laws.

A bill in Multnomah county and two other counties of the state establishing single tax.

A most casual examination of the 39 measures in all, of which the foregoing are instances, demonstrates that the approval of some in themselves would defeat others. The repeal of the county option tax would necessarily defeat single tax in the three counties where it comes

up. On the other hand, approval of a state-wide single tax would put the single tax into effect in all counties, no matter how the voters in the three counties decided the question.

It may become possible that all of the 8 or 9 state-wide measures may carry, in which event the ones receiving the highest affirmative vote will prevail, and this result immediately brings about a chaotic condition that could only be unravelled with respect to taxation by long litigation carried to the supreme court, thus impairing the public revenues.

These conditions in Oregon are fostered by the Fels Fund Commission, which is pledged to establish single tax in some communities within a definite period of time, and if any of these measures should succeed, they will certainly be followed by other measures designed more or less to confiscate to the state by a process of high taxation all privately owned lands in the community.

If approval of these measures is brought about, our state will be put back where it was before the last election in the matter of taxation laws and constitutional provisions; and defeat of all of the measures suggested will deprive the legislature of authority to regulate taxation at all.

In Oregon approximately 5,000 voters can put a measure directly before the people, and these signatures may all be obtained in one county or in the congested districts of the City of Portland alone. But under the system with respect to nomination for office, a man on a state ticket is required to obtain signatures in at least 10 precincts of seven counties before his nomination can be considered.

In the State of Ohio, to be voted upon September 3rd next, there are 41 new constitutional amendments, each and every one of which has been formulated by a small and active organized minority. Among the characterictic features of these amendments are the following:

(a) There is to be no limit on the amount recoverable in the case of a death of an employee.

(b) To initiate or refer shall only require three per cent of the voters.

(c) The establishment of a minum wage for labor.

(d) Depriving the courts of the exercise of any right to enjoin or restrain any acts in labor disputes.

(e) Increasing the liabilities of state banks some hundred per cent.

(f) Municipal and state bonds to be taxed.

Within these few features it is readily seen that if the amendments are carried, as they usually are if a voter acts upon something he does not understand, all bonds in the State of Ohio will suffer serious decline, liquid capital will be obstructed, new obligations will have to

pay a higher rate of interest, and in the face of these conditions the burden of the small consumer will necessarily increase. So far as investments are concerned, capital will naturally seek places where the administration of such laws cannot get at it.

Ask yourselves, therefore, whether it is any wonder that bankers and lawyers are advising the sale of securities which are found subject to these revolutionary and confiscatory measures? Ask yourselves whether the cost is reckoned by the people of the State of Ohio in the introduction of any such measures under the plea of government in any sense?

This is enough to illustrate that the immediate effect of the primary, coupled with the initiative and referendum, increases the political agitation and uncertainty referred to, leaves the voter always in doubt, leaves the community in a state of business unrest, fails in its corrective influence upon any legislative enactment because depriving the legislature of that office, and fails of the original object and purpose which alone was corrective and designed to be beneficial to the public interest.

Mark you, that there is no limitation or qualification upon the character of the measure at any time that may be submitted. Granting you that the original purpose was to be beneficially corrective so far as the initiative and referendum were concerned, and that the primary was to avoid the convention system and party boss rule, the result is and has been and will continue to be to build up the most colossal method of machination and ring direction that any country has ever suffered under. The original design of the method that measures of great public interest should come before the people may in a strict sense not be open to question, but when every gamut of public regulation is run, all of the measures which ordinarily should go to the legislature are found to take shape in submission to a vote of the people, even upon strictly local affairs. As a sound illustrative instance of the working out of the primary situation upon Oregon politics, we have the anomaly this year of a man nominated for senator by the vote of the people on a Republican ticket, that same man selected as a delegate under the old convention system, and that same man now one of the delegates at large to the Bull Moose convention to be held in Chicago in August.

When you can reach a Republican state with approximately 150,000 voters, of which a clear number of at least 70,000 in excess of all others are Republicans, and yet elect Democratic governors, Democratic senators, and keep that state represented in congress on the Democratic side, and to accomplish that permit a continuous admixture of candidates so as to obviate the expression of the majority rule, the advocates of the system may certainly congratulate them-

selves upon having accomplished a complete overturning of well-recognized institutions upon which this government was originally founded.

A short while ago, the people in the western part of the state and upon the lower Columbia River were incensed at the people in the eastern part of the state and upon the upper Columbia River, respectively engaged in the occupation of fisheries, with the result that both sides initiated a bill to prevent fishing within certain particular seasons, and the anomaly of the system is well illustrated by the result that both bills passed and it became illegal to fish in either locality as the result of the expression of the popular vote, thus accomplishing, if the law was enforced, a cessation of the industry in the entire state within the time specified.

Within the same period in the southern part of our state, a large number of persons having a grievance against a business of large proportion and capital, well organized and industrially operated, at the mouth of the Rogue River, which is not navigable except for a small distance, initiated a bill to prevent the taking of fish in Rogue River except with hook and line. The investments in the business at the mouth of the river had brought about the formation of a thrifty community, had led to the expenditure and promotion of a business involving about $750,000 in capital, and gave employment to some 1,800 people. The fishing with hook and line had never been interfered with in the locality where the bill was initiated. Rogue River above the location known as Hell Gate had always been and been kept a good fishing stream, and the operation of traps and gill nets at the mouth of the river had never intercepted the class of fish which had been caught with hook and line. Furthermore, if it had, a just regulation would have been to have created a season and a method of operation which would have allowed certain classes of fish to proceed up the river. Be that as it may, the condition was as stated, and the people of the State of Oregon voted to annihilate the business of Mr. Hume, and did so. The cannery was closed, the property was sold, and the community has ceased to exist as a thrifty settlement, and the property has passed in one large tract into the hands of a single holder who is now using it as a stock ranch.

These instances are sufficient to show you the practical operations of the system; there are numerous others.

A recent comment in the public press is enlightening upon these features:

"The supreme court has decided that the referendum—rotten with admitted fraud—against the university appropriation shall go on the ballot. Originally, Judge Galloway, of Marion county, declared the petition for the referendum invalid because it suppurated a flood of forged

names. The enemies of the university who had paid to have forged names put on the petition, took the case to the supreme court, where Mr. Friendly, of Eugene, produced the evidence showing that thousands of fraudulent names had been attached to the petition. The supreme court decided that a citizen had no right to bring the suit to set aside this fraudulent petition, and the case was returned to Judge Galloway, who again decided the petition invalid. When the petition which bore on its face the indisputable evidence of its own fraud again went before the supreme court that great, enlightened and wise body declared it valid, and ruled that the referendum must go on the ballot.

"Those who contested the validity of the petition showed that it contained thousands of forged names; the circulators of the petition were not required to show that the remaining names were genuine, although the burden of proof was on them.

"This decision of the observing and sapient supreme court makes the initiative and referendum laws even more dangerous to the state than they were before. It makes it possible for five epr cent of the most ignorant and vicious citizens to overthrow our state institutions and destroy the state government. It places the burden of showing fraud in petitions on the tax payer, and aligns with the forgers and destructionists the highest court in the state. It puts a premium on fraud; makes forgery pay splendid dividends to the criminal; induces poor honesty to doff its respectability and become rich and powerful through crime; and assures the political crook, grafter, and hold-up man that if he have a sufficient following of crooks, grafters and hold-up men to make a showing at election time he may go as far as he likes."

We now have arrived at the much more serious conclusions to be drawn from our discussion. What of the individual? What of the effect of this irresponsible system upon citizenship?

In this much lauded perfection of "postcard politics" have we not attained expression of the popular will at the cost of character and responsibility?

With all our development of political economy what have we done for the finally indispensable human mind?

Let us examine by analogy. The varying skill of human hands has produced results which even the most accurate precision of machinery could not have reached. No violin of the present day can produce the tones of those made, say 200 years ago. The modern paper-maker cannot duplicate the art and quality of the fifteenth century. The silks, satins and brocades of ages long past possessed texture and quality which money cannot buy today. It is true we have new processes, new methods, and that machinery does it all. But what of priceless individuality?

It is an axiom of private conduct that he who would command must first learn to obey, and such is the nature of our national constitution that some are ordained of necessity to rule and teach, while others from the same necessity are required to submit and to obey. The basis of our entire national conduct at the present time, the foundation of all our restivity of public opinion, when strictly analyzed, gets down to the one conclusion that the American people as a class desire to obtain some system whereby they may continually disobey and avoid being ruled or taught.

That thing which does more to bring this about than any other cause is the canker of paternalism. What is everybody's business is nobody's business. An uncontrolled mob produces its Robespierre. A society in which all are leaders produces no government and leads to internecine strife. These, my friends, are the undeniable results of history. It is true that the limitations are that there must be a prosperous common people; but that common people is the more prosperous which under its consent has the less law and the less government and the more certainty in the manner that it is ruled and taught. Our national public mind, like that of Rome as recorded by Gibbon, is fettered by selfish interest, greed and tyranny, so that it no longer thinks clearly on matters for the benefit of the whole nation. Time is too short to discuss even the main causes that have brought this about, but any student of affairs in examining recent events is led to the irrevocable conclusion that the introduction of the system designated as the primary, initiative and referendum system has destroyed individual accountability, has induced individual irresponsibility, has incited the mob, and is well calculated to destroy the institutions upon which this government was first founded.

No nation on earth ever existed in a state of peace and prosperity that permitted itself to be torn by the political agitations, the strife and turmoil under which this country is fast passing to decay. We pride ourselves upon requiring candidates for citizenship to know our constitution and to be familiar with our state and national governments, and if he satisfies the inquiries of some blue-stocking officer from Washington he is passed to that high honor of American citizenship, which is immediately degraded into the dust of irresponsible mob rule that disregards constitutional law, sets at naught the sovereignty of a state legislature, and recalls a judiciary which has built our law for the last two hundred years.

If these are the things you want in the empire of your great state, then you are warned that it will be a sorry day for the sovereignty of that part of the nation which has taken for its name that of the father of our country.

THE RECALL OF JUDGES.

HON. FREDERICK V. BROWN, SEATTLE.

The committee having to do with the arrangement of the program for this meeting appointed me to begin a discussion of the subject of the judicial recall. If I had the ability to do so, I would not attempt to advance any suggestions concerning that subject in so convincing a manner as Mr. Bristol has treated his subject, because I find that he has discouraged all discussion by foreclosing every argument upon the subject. I shall try, however, to best entertain the meeting and accomplish the purpose for which we are assembled in the stated meeting of the Association, by inviting a discussion among the members of this most interesting subject.

The recall of judges and of judicial decisions is not, like the subject of the initiative and referendum which has been discussed here, a live subject with the people of Washington at this time. We do not contemplate amending the fundamental law of the state during the present year with respect to the subject of judicial recall as we do with respect to those other subjects. However, I believe that there are principles involved in the subject of judicial recall which are as much live subjects to the mind of the American citizen as are the subjects Mr. Bristol has so illuminatingly discussed before us this evening. I hold no brief for any theory or postulate concerning the subject of judicial recall. I appear to speak under no retainer for any interest concerning that subject. I have no personal interest in the subject of the judicial recall except the interest of the American citizen in the success of government in the United States, according to the will of the people, subject, if possible, to the rules and fundamental laws established by our forefathers, but, in any event, whether subject to the constitution established by them or otherwise —in any event subject to the immutable laws of justice and fair play. And it is because I think there are involved, in the propositions concerned judicial recall, principles affecting those subjects that I have anything at all to say upon this subject. Considered purely as a method of selecting a certain class of public officers to engage in public employment and of dismissing those public officers from public employment, the subject has no interest to me at all. To put it in another way, I am content that judicial officers shall be selected to enter the public service and shall be dismissed from the public service just exactly as all other officers of the public are engaged and dismissed, and I believe it does not make one iota of difference how they are selected so long as they are selected pursuant to some system which gives the voters an opportunity to ascertain their quali-

fications, select them with deliberation and dismiss them only when they have proven not worthy of the trust that has been imposed upon them.

But there are certain suggestions relative to the subject of judicial recall that have been made that afford thought for serious reflection by the patriotic American citizen. I believe that the theories that are advanced concerning judicial recall to some extent prove that the American people, or a section of them, have lost the genius for self-government which is inherent in the Anglo-Saxon, and I believe that many of the propositions that have been suggested in connection with this subject are due to the fact. The common law and the English system of administering justice are peculiar to the Anglo-Saxon people. They have grown out of their bent of mind and of their temperament. They have never grown out of any other civilization. During the past one hundred and fifty years, starting with those institutions established largely by that sort of population, we have invited and received a very large influx of population from other countries, and it has been recognized by political economists, American as well as foreign, that one of the great problems of the American people was the proper assimilation of that immigration. I thing I can detect, in the theories that are advanced with reference to this subject, indications that we have failed, in some respect, to properly assimilate that population and that the suggestions that come now, with reference to the treatment of the judiciary and of judicial decisions, are an evidence of the fact that a large proportion of our people fail to comprehend the ancient ideas of the Anglo-Saxon people concerning the subject of self government, judicial procedure and due process of law. In witness of that fact I call to mind that one of the most prominent criticisms of judicial decisions of recent years and one of the most potent arguments in favor of judicial recall and recall of judicial decisions is the argument that is advanced against the decision of the Court of Appeals of New York concerning the workingmen's compensation act, known among the members of the profession as the Ives case. It has been attacked by high authorities in the political field as being based upon what is called—"a wrong political philosophy." Now, it is not the idea of lawyers, especially of lawyers under the common law system and English system of court procedure, that the courts and the judges are responsible for the protection of correct political philosophies, and yet, as I say, the chief argument advanced by the recallists as a good reason for the recall of judges and the recall of judicial decisions is the fact that in this case, the decision of the court is based upon "a wrong political philosophy."

Witness again, in support of my contention, that an erroneous idea is abroad concerning the proper function of courts, the suggestion

that, because courts are announcing "wrong political philosophies," that either the judge who makes the announcements or the decisions themselves should be recalled by vote of the people. To what purpose? It is not for the purpose of punishing or reprimanding the judges who have been thus guilty of heritical ideas with reference to political philosophy or political economy, if you please, but for the purpose of changing the law—for the purpose of changing the political philosophy" upon which that decision is based. Now, in that suggestion, it seems to me, is contained evidence of the fact that our people have grown away from the correct, the ancient idea of what courts are instituted for and what the other functions of government are established for and how the correct political principles of this government should be established and how incorrect political principles, and "philosophies," if you please, should be changed. In short, it is proposed that the fundamental law of the land, upon which all acts of legislation and of legislative bodies of various kinds rest, shall be changed by either recalling from office certain individuals who have announced a rule of law or by recalling their decisions and having a popular vote upon them.

Now it seems to me that it must be plain that, in the first place, the people who propose that idea have forgotten that our institutions are predicated upon the principle that the people have the right, at all times, to declare, to establish, to modify, to repeal and change our principles of political philosophy and all of our principles of government. They have that right, by a proceeding directly calculated to bring out the will of the people and count them head by head, and in the second place that the courts through whom they now propose to make these changes and establish these laws, are created for an entirely different purpose. So that what they propose now by judicial recall is to change the constitution, change the fundamental laws or the political philosophies of the country by a vote upon the question whether, for instance, John Jones shall recover against Henry Smith or whether Richard Roe shall be released on a writ of *habeas corpus*, which, necessarily, of course, confuses the issue and determines an important public question of government upon an entirely false issue. In other words, to accomplish a certain reform of political philosophy, as the advocates of judicial recall term it, they must perforce destroy some judges or destroy a court or destroy a decision of a court.

Now, we, as lawyers know, and most English-speaking citizens know, that the courts were not established and were never designed to be a part of the governmental functions of a free people. They were established originally to supersede the old methods of ascertaining the truth by walking over burning plowshares or by duels, simply

to ascertain the truth, so that the rules of law and right and justice might be applied to the facts as they were established; and they were not established and are not calculated to serve to govern the people by either making or changing laws. The error, it seems to me, is in assuming that the courts do make the law, when we all understand, on the other hand, that courts, properly administered, simply serve the function of declaring what the law is—what the people have indicated the law to be in their written statutes or by their customs and manners. If it is said that existing methods of making and changing the laws are inadequate, then let us come to a vote upon that question. Let the issue not be a false one. If it is the concensus of opinion in the United States that our institutions are a failure, that the constitution of the United States is based upon wrong principles or contains wrong ideas of political philosophy, then let us meet that issue fairly and squarely and vote upon it and, whatever the will of the people is, let it be recorded so that history can make no mistake, and let the results accomplish whatever they may. We certainly can abide by them, for I, as one American citizen, have no fear with reference to the character of the laws or institutions that will be adopted in this country. If it is to be socialism—still it will be the sort of socialism that a majority of us believe in and the rest can be content and must be content to live under; but let us not establish socialism or any other new and strange theory of government by voting upon a false issue as to whether or not some judge or some decision is consonant with our general political philosophies as evidenced by the newspapers and magazines and soap-box orators.

I resent the idea not only of government being established and fundamental principles being changed by action upon false issues, but I resent, also, the idea of private rights being determined upon mixed issues of what the people want, because the private right should depend upon what laws the people have already established and not upon what laws they wish to see established in the future.

It is not the method of selecting and dismissing judges to which the objection goes. The opponents of the recall err in believing that they are defending the independence of the judiciary; in fact, the judiciary is not independent in a majority of our states and never has been. It has always been subject to selection by the popular vote of the people and subject to retirement—recall, of you please—at the end of stated periods more or less a brief, so that what the opponents of recall methods are pleased to call judicial independence or the inpendence, in those states, of the judiciary is the native, inde endence of character possessed by the judges themselves, which exists to a degree that we all have reason to be grateful for. In witness of that, it is perhaps, unnecessary for me to call attention to al-

most daily decisions of courts contrary to public sentiment, contrary to sympathy, and not only that but decisions in the enforcement of unpopular and unwise legislation. Entire independence of the judiciary is absolutely inconsistent with our institutions. There cannot be, consistent with our theory of government, any public officers that are entirely independent of the will of the people. They must all be subject tothe public will, and the judiciary, like all the rest, should not be independent in the scope of their jurisdiction or in the exercise of their powers or in the method in which they are selected or dismissed. They should, however—and that is something that I fear they are not now—they should, however, be free from the pressure that is rightfully and properly exerted upon representative bodies to respond to the popular will, because the only regard judges should have in making their decisions should be, "What was the popular will when the law which we are expounding was written or expressed?" and it should never be, "What is the popular will now, at this time?" In other words, with reference to all controversies that come before the courts, the rules of the game—if I may use a homely expression for which we have a high authority in this last campaign —should not be changed while the game is on. With reference to that Mr. Karl T. Frederick has said, in last month's *Atlantic*, a few pertinent things. He says: "The belief that the decision of specific cases should be left to able and disinterested men has heretofore been universally approved. To establish a rule of conduct in advance is a very different thing from applying it to a particular case. The trouble lies not in establishing the rule but in applying it when it pinches." Then he inquires: "Shall we make a fundamental rule of conduct, and then, when it chafes a bare majority of us, shall we abandon it? Shall we object when it is applied to ourselves? If we mean to do so, let us do so frankly and in a straightforward way and not by a miserable quibble. This is a rule, let us say, that works in only one way —always for us, never against us. Shall we," he continues, "having established the rules and begun the game change them while the game is on, if it is going against us? Let us not set ourselves up as judges in our own lawsuits. Let us play fair. Let us not attempt to escape by pretending that we are interpreting the rule as it should be. Let us not force the court to adopt the interpretation of that contestant who can display the greatest force. Let us say, 'We made the rule and we stand by it for the present although, now in operation, we do not like it. Hereafter let it be amended.' The latter is the only honest thing to do; it is the only scientific thing to do. It is legislation, and that of the most fundamental and sovereign sort."

Personally, I think, with reference to the judges, that, aside from all other political questions involving the judiciary, infinitely more

harm will come to the courts from the primaries than from the recall. More care than we are now exercising should be used in the selecting of judges. That less care will be used under the primary system, has already been demonstrated with reference to all other public officers. Again, in the selection of judicial officers it has been a proven principle that their selection should be entirely divorced from politics by separating their election from the selection of all other officers, as has been done in the state of Wisconsin for many years with the greatest success, and after they are thus selected with the greatest care that universal suffrage can give to the decision of any question, I care not and I believe it is absolutely immaterial, how they shall be dismissed from the public service. I think the better plan is that they should be retained in the public service so long as they serve the public according to the principles of law as they are established by the legislature and by the popular will. There is no occasion for changing judicial officers as there are the legislative and administrative officers, and it is common knowledge that the greater their experience the greater their capacity and ability, and, therefore, it seems to me that the practice of retention in office is best, and if along with that goes the practice that the recallists contend for, that the judges, like all other public officers, should be dismissed from the public service when the majority of the people will it, then we can raise no objection to that, because it is one of the principles of our government that a public servant shall be selected by, and be subject to, the public will. In short, let the supremacy of the people, whether we write People with capital letters or small primer, remain unquestioned, but, at the same time, let us not permit our form of government to be changed without letting the people know that it is being done, and let us not depart from the system of complete separation between the law-making powers and the judicial powers of government until we are ready to confess and be able to freely and fairly concede that the plan of our institutions has proven a failure.

The courts are the forums wherein the private citizens have the truth of their claims established and where they receive the benefits and protection of liberty under the law and of self-government restrained by principles of justice. Let it so remain and let us not depart from the great principles embodied in the homely expression that the whole sum of human government is to get twelve men in the jury box, because we, as individual citizens, only realize the full benefit of fair and honest government when we have occasion to face twelve men in the jury box. In these days, with everybody rainbow-chasing in a political haze, it is very refreshing to read the careful analytical statement of the nature of our institutions that have been made in periods when the ancient landmarks were not obscured by the dust

of political warfare. Let me quote: "Judges are not law-makers. They are administrators. Their duty is not to determine what the law shall be, but to determine what the law is. To apply to them the principle of the recall is to set up the idea that the determination of what the law is must respond tothe popular impulse and public judgment. It is sufficient that the people should have the power to change the law when they will." The gentleman who wrote that was, at the time when it was written, connected with Princeton university.

MODERN TENDENCIES OF LEGISLATION.

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Legislation, as it is now understood, is a matter of comparatively recent origin. There had been a legislative body in Great Britain for centuries before it undertook to perform any other function than to declare what the law was. The Saxon idea being that the law was something that had always existed and was known to every one, and that the only purpose of a legislature was to declare the law when some powerful individual or class attempted to over-ride it. This was intended merely as a reminder that the law should remain as it had always been.

In the thirteenth century Parliament began making new laws, but these accumulated very slowly. During the reign of Charles I, the entire output of legislative enactment to that time, collected and bound together, filled but five small volumes—less than the present index of our federal statutes. Gradually, however, legislative bodies awoke to a sense of their powers, and, in this country especially, have exercised them with increasing frequency.

Professor Stimson, who occupies the chair of comparative legislation at Harvard, estimates that during the first half of the last century the legislative enactment of the Congress of the United States, added to the legislative enactment of the several states, is a thousand-fold the entire law making of England for the five centuries preceding, and the present tendency is to increase rather than diminish the amount of legislation. Since 1890 congress has passed more law than during the first one hundred years of the existence of this government. The legislature of Washington, since its organization as a territory, has passed almost as much new law as has been passed in England since the time of Cromwell. This, of course, does not take into account the immense amount of private and special legislation passed in that country.

A similar amount of legislative enactment has characterized the progress of the several states. When we contemplate this vast addition to the written law, the inquiry naturally suggests itself: Whither are we tending, and what is the net result of all this legislation? It is only that part of it which shows a tendency to depart from established usages and introduce new features into our state and federal government with which this paper is concerned.

If there was one subject upon which the founders of this government had more pronounced views than another, it was that of personal liberty. Following the spirit of the English common law, they sought to erect every safeguard and to take every precaution to protect the rights and secure the liberties of the individual man.

In its earlier legislation, congress sought to condemn only those acts, the doing of which would seriously affect the community. The same spirit, with rare exceptions, characterized the early legislation of the states. During the period between 1830 and 1860, however, a reform movement began to spread over the country, and then the idea that the world can be made good by law began to manifest itself in legislation. During that period a number of the states passed prohibition laws, and almost all of them passed laws having for their purpose the regulation of the morals of the individual. This class of legislation received a check during the civil war and the reconstruction period which followed; but in recent years has broken out with increased violence.

Blackstone tells us, that in legislation by the people, they will show great caution in making new laws which may interfere with their rights and liberties. Exactly the reverse has proven true. There have seldom been as many restrictions placed upon the conduct of a people by a monarch as the people of this country have placed upon themselves. We seem perfectly willing that the legislature elected by ourselves may impose upon us the standards of self-righteousness of any sect or faction.

The distinction between those things which are criminal and those things which are merely sinful is entirely lost; and, going further, we legislate against those things which are neither sinful nor criminal, but which the passing whim of some individual or organization seeks for the moment to condemn.

Some penurious traveler observes that the man who gives the porter or waiter a quarter, gets better service than himself. In his anger he goes to the legislature and a law against tipping is the result.

Some man goes out with a crowd of good-fellows and awakes the next morning with a bad taste in his mouth and a pain in his head, and before his mind becomes clear, he has drafted a statute or an ordinance against treating; and we submit to these regulations upon two conditions: First, they must always be imposed by a legislature which we ourselves have elected; and, second, we must never be required to observe them.

Just prior to the revolution, parliament passed a law authorising the king's officers armed with writs of assistance, to make searches of the houses of the colonists. The outcry against this precedure is historic. Imagine the indignation that would have been aroused if, in addition to the powers conferred, they had been authorized to make a tour of inspection of the hotels and restaurants to determine if the bed sheets were all nine feet long and the kitchen in a proper state of sanitation. It would have been prominently mentioned in

the Declaration of Independence and made the subject of a clause in the Constitution of the United States. But we, the descendants of those people, are daily permitting restraints to be imposed upon ourselves, any one of which, in the eyes of our forefathers, would have justified the revolution.

In the State of Washington a man may not take a drink upon a train or other public conveyance, or give a dime to the porter who shines his shoes, or the waiter who serves his meal, or have in his possession any wild bird, living or dead; or sell whiskey under four years old, unless it be Scotch or Irish whiskey; or cut his neighbor's harness when his team is hitched at a religious meeting, or untie a horse from a post to which it has been hitched by its owner, or post a handbill upon a fence; or, if he be afflicted with insomnia, walk the streets at late or unseemly hours without subjecting himself to prosecution; nor may a boy throw a stone at a barn, or destroy a bird's nest, or have the eggs of a wild bird in his possession, or kill a honey bee; or have tobacco in any form in his possession until he is twenty-one years old, without subjecting himself to a fine and imprisonment.

In Oklahoma, every person who leaves an animal hitched during cold weather, or in the night time, is guilty of a misdemeanor. The statute does not specify the length of time, or degree of cold required to bring the offender within its operation. In that state the use of profane language is prohibited without regard to time or place. The law applies alike to the man who swears in public and to the farmer, who alone in the field, urges his team to greater activity by the use of language forbidden by the second commandment; and this, too, in a state where farming operations are largely conducted with mules.

Blasphemy is also defined and made punishable by the laws of Oklahoma. Among other things, it consists of "casting contumelius reproach upon the Christian, or any other religion."

In Idaho a fine of not to exceed five hundred dollars is the penalty prescribed for selling intoxicating liquor at a camp meeting. Inasmuch as the laws of that state prescribe a fine of three hundred dollars and six months' imprisonment for selling liquor without a license, it would seem that the statute was enacted to encourage the practice which, by its letter, it forbids.

In several states it is a misdeameanor to bet upon an election, and in one it is an offense for a high school student to enter a fraternity; but it remains for Kansas, the state whose name is so prominent in the great struggle for human freedom, to strike the final blow at the liberty of the citizen. In that state it is made a crime for

any person to eat, or pretend to eat, any snakes, lizzards, scorpions, centipeds, tarantulas or other reptiles in any public place.

The above instances, and many others that might be cited, show the extremes to which legislation has gone in an effort to regulate every phase of human conduct by law. Dr. Samuel Johnson tells us that law is the result of human wisdom acting upon human experience for the benefit of the public. He would doubtless have entertained a different opinion of many of our recent statutory enactments.

This class of legislation would not seem so ridiculous if it had the slightest tendency to decrease the vice or folly at which it is leveled. If, by reason of it, the public peace were less frequently invaded, or, through its passage, public morals had attained to a higher standard, we could feel that we had secured something in return for the liberties we have surrendered. But the most noticeable consequence of such legislation is a wide-spread and growing disrespect for the law. Nobody pretends to obey these laws; no public officer charged with their enforcement seems to understand that they were ever enacted to be obeyed. The public which clamors for their enactment takes not the slightest interest in their enforcement. We seem perfectly willing that any course of conduct may continue if, in addition to its being wicked or foolish, we can make it criminal.

The tendency of modern legislation to create boards and commissions, to which are delegated important functions of state and federal government, is a distinct departure from what was once considered a fundamental principle of popular government and is one of the most striking tendencies of modern legislation.

These commissions are constantly increasing in number and efficiency, in the face of a strong popular prejudice against bureaucracy, and contemporaneously with a growing demand for direct government through the medium of the initiative and referendum and direct primary, to the underlying principles of which they seem in direct opposition. Originally they were mere boards appointed by the governor, and usually selected from the members of his party who had contributed their time and money to his campaign, and who, in return, wished to be rewarded by some official distinction which would not involve exertion or responsibility. Their duties usually consisted of investigating the public institutions and public service corporations under their jurisdiction for the purpose of collecting information to be used as the basis of recommendations to the legislature. The traveling done in the performance of their duties was generally in the nature of a holiday excursion, frequently as the guests of the institution or corporation under investigation. They seldom found any serious fault or recommended any radical

changes. They were chiefly noted for their extravagance, incompetence and inefficiency. Despite the prejudice that their administration of affairs engendered in the public mind, they have greatly increased in number and have been clothed with additional powers. They are now generally composed of men who devote their entire time to the discharge of their duties; who are compensated for their services and who have had some training along the line of the duties which they undertake.

The powers which they now exercise are so extensive that they are referred to by some writers as the fourth department of the government. The power to fix freight rates and rates charged for gas, water and electricity; to fix charges and services of telephone and telegraph companies; to fix charges and service of wharfingers and warehouses, together with the power to order improvements and to prescribe rules for the conduct of the business of such institutions, is, in most states, exercised by these commissions.

In addition to these are industrial commissions, tax commissions; boards of health, boards of control; forest commissions; boards of accountants; highway commissions, and various boards of examiners, which, to a greater or less extent, exercise similar powers.

In the federal government these commissions have their counterpart in the Interstate Commerce Commission, with power to fix freight rates; the Department of Commerce and Labor, with power to try and determine the question of the legal residence of an alleged alien, and the Department of Agriculture, with power to prescribe rules for the regulation of Forest Reserves.

The interesting feature of it all is, that we are centralizing to a certain extent all of the powers of the three original branches of government into a fourth branch, further removed from the popular will than any of the others; and this, at a time when it is commonly supposed we are drifting toward direct government.

In states where the initiative and referendum are in operation, commissioners are being created, clothed with certain powers, legislative in their nature, further removed from the people than ever the legislature was.

While demand for the recall of judges is increasing, commissions exercising highly important judicial functions are springing into existence, the members of which are neither subject to recall nor elected by the people; and strange as it may seem, these commissions find their strongest champions among the people who favor the initiative, referendum and recall.

It is difficult to forsee where this tendency toward government by commission may end. The more strongly the idea may be opposed to the principles advocated by an organization or party,

the more readily that organization or party submits to its rule. There is probably no class of people among whom the sentiment for the recall of judges is so strong as the laboring class; yet they willingly submit the questions arising out of personal injuries received by them to an industrial commission which is appointed by the governor, and which is beyond the reach of popular recall; which has power to promulgate rules governing the amounts to be paid into and out of the accident fund; regulate the proof of accident and extent thereof; the proof of death; the proof of relationship and the extent of dependency of the person claiming damage, and this in a proceeding at which the injured person has no legal right to be present.

Congress has recently created a tariff board or commission, with power to inquire into and make recommendation to congress concerning the duty upon imported articles, and it is seriously proposed to confer upon this, or a similar commission, the power to determine the amount of duty imposed. Such a law will remove from the legislative department a question, the determination of which has in times past, been one of the most important subjects over which it exercised control and which has been the subject of more controversy than any other before the American people. A recent president seriously recommended that the contracts and affairs of all corporations (and the bulk of modern business is done by corporations) should be submitted to a commission.

The immigration laws confer upon the Department of Commerce and Labor power to try and determine the question of legal residence of an alleged alien and to order him deported if found to be illegally in the United States, and its conclusions are binding upon the courts as to all matters of fact.

The power conferred upon the Secretary of Agriculture to prescribe rules for the regulation of forest reserves, a violation of which is punishable by fine and imprisonment, is a power which at one time was supposed to rest exclusively with the legislature. It required some very ingenuous reasoning upon the part of the Supreme Court of the United States to save this statute from conflict with the constitution.

And thus the idea that the government is composed of the legislative, executive and judicial branches is gradually being encroached upon; and a fourth department is springing into existence, combining the powers of all of the other three.

In much of the legislation of recent years, there is a strong tendency toward restricting the right to contract. Almost every state now has a law regulating hours of service upon public works and public service corporations and fixing a minimum wage to be paid

upon public works. Some states have passed laws regulating hours of service for women in factories and prohibiting children from working in them. The age of prohibition being generally fixed at from fourteen to sixteen years. A few states prohibit children under fourteen from doing any work for compensation; a number of the states have laws requiring corporations to pay their employees weekly, and most of these laws require payments to be made in actual money.

Closely allied to the above are laws prohibiting factories from building houses and renting them to their employees. This legislation, and much more of similar character, is directed at well known and generally recognized abuses. The practice of paying laborers in time checks, which were discounted by the employer or some one acting for him, or paying them in commodities furnished at a store of which the employer was the owner and usually at a price materially higher than the regular market price, and building houses and requiring employees to occupy them at exorbitant rental, were all very great evils; yet they have not been abolished without curtailing a right which was at one time sacredly guarded by the law; namely, the right to freedom of contract; nor have these rights been surrendered without some attending inconvenience. During the panic of 1907, a number of factories were compelled to close because the employees could not be paid, in part, in time checks, although the employers were willing, and the employees anxious, to make such an arrangement.

It is surprising to note in connection with labor legislation and legislation creating boards and commissions, how much of this ancient right to contract has gone. Nor does its loss excite any considerable protest. The average man seems willing to surrender the substance if he may retain the form of freedom. A man who would shoulder his musket to defend his rights to vote for road supervisor will surrender his right to fix by contract the rate which he shall pay for shipping his produce; or the price of the gas or electricity he consumes; or the number of hours he may work at a giving calling, without a murmur. Legislative interference with the individual citizen is gradually intruding itself into every walk of life. The occupations of barbers, plumbers, blacksmiths, coal dealers and junk dealers are, one at a time, being brought within the supervision of the law. No matter in what field of endeavor the citizen may be engaged, the tendency is to substitute for his individual judgment and discretion, the judgment and discretion of the state.

It is not the purpose of this paper to contend that the good accomplished by this class of legislation is of greater or less value than the rights surrendered, but merely to note its departure from what were once considered fundamental principles of the law. In all of this class of legislation is discernable the strong tendency of our

government toward paternalism, and it may not be out of place to observe that when a government has become paternal in its nature, it has taken a long step toward socialism. When we have brought a few more trades and occupations under the supervision of the law, and a few more industries under the control of boards and commissions, and clothe them with a few additional powers, we have but to take one more step—transfer the title to property to the government, and socialistic government is already organized, equipped and in working order.

Perhaps the most harmful feature of modern legislation is the tendency which in recent years amounts to a mania to tinker with the law without any definite end or purpose in view. Legislators, who know nothing of the law as it now exists, consider themselves perfectly competent to amend, repeal or modify. Just as the lawyers are beginning to be able to advise their clients of their legal rights, and courts to enforce those rights under existing laws, we have a new session of the legislature attended by a cloudburst of legislation and chaos. A lawyer opens a new volume of the session laws with feelings very much akin to those with which he would unpack an infernal machine. He knows that he will find that property rights have been changed at random; that rules of court procedure have been established by men who would not know the difference between a demurrer and a bill of particulars; that crimes have been created involving neither wrongful intent nor moral turpitude.

In 1881, the legislature of the then territory of Washington revised and codified the laws. The laws thus compiled are known as the code of 1881. This volume consists of 580 pages, exclusive of the index, and contains all necessary legislation. Since that time, sixteen volumes of session laws have accumulated, and the laws now in force aggregate something over four thousand pages. It may well be doubted, however, if justice is more speedily or more adequately administered, or if the business of the state and its municipalities is more economically or satisfactorily transacted than it would have been had there never been a session of the legislature since. This does not imply that some good laws have not been enacted since that time, but the uncertainty incident to constant change has probably been productive of as much evil as the good laws enacted have remedied.

Among other things, the code of 1881 provides for the levy and collection of taxes. It is interesting to note the vicissitudes through which this law has passed since its enactment. By its terms taxes became delinquent on the 31st day of December, at six p. m. The legislature of 1889 changed the date of delinquency to June 1st; the legislature of 1891 changed the date to March 1st; in 1893 it was

changed to April 1st, and in 1895 it was again changed to June 1st, where it now remains. Two legislatures since that date have re-enacted the section fixing the date at June 1st. I have mentioned the time of delinquency merely as an illustration. Almost every section of the law has encountered a similar fate. The code of public instruction has also been a favorite field for legislative activity. Every legislature since 1881, with the exception of 1905, has juggled with this act. The sections providing for the time for holding elections; the distributing of the school fund; the duties of directors, and the duties and powers of county superintendents have been shaken up from time to time like the contents of a trick box.

It would be tiresome to go into details with reference to the changes that have been made in regard to the insurance laws; the public land laws; the road laws; the game and fish laws; the military code and the election laws. They, like all others upon our statute books have been the victims of the modern mania for legislation. Nor is Washington the only state afflicted in this regard. Our expertence is the experience of every state in the Union; but, strange as it may seem, the popular criticism which this changing of the law arouses is directed, not at the legislature, but at the courts.

If the courts declare one of these acts unconstitutional, they are accused of over-riding the will of the people as expressed by the legislature. If they attempt to construe them into intelligent meaning, we hear of "judge-made" law; if they follow them, they are censured for allowing justice to be defeated by adherence to technicalities. Most of these useless changes in the law are doubtless due to the prevalent American notion that law-making is the one occupation that requires no previous education or experience.

> "A man must serve his turn at every trade,
> Save censure; Critics all are ready made,"

says Lord Byron in his "English Bards and Scotch Reviewers." We have placed law-makers in this class.

The blacksmith who should undertake to repair the delicate mechanism of a watch; the butcher who should attempt a serious surgical operation; the stone cutter who should try to trace the graceful curves of the Venus di Milo, would bring to the undertaking experience as adequate and training as well suited to the task as is possessed by the average legislator for the duty of making law.

When it is considered that all property rights originate in the law; that all contractual relations are governed by it and that life and liberty look to it for protection, it would seem that public sentiment should demand that it be given some degree of permanency; but the more laws that are made, the more are demanded. According to the

popular conception, the legislature does not change them with sufficient rapidity, and a clamor arises for the initiative and referendum in order that legal principles may be abolished and rules of law unsettled without the intervention of the middle man.

Where will it all end? Will we sometime learn that property, liberty and morality are best guarded by laws reflective of the settled convictions of years, or will we continue to place the passing whim of every agitator and notoriety seeker upon our statute books until we reach that condition which, one morning upon the plains of Shinar, found the descendants of Noah babbling, each in a langua e that none of the others understood.

A GOVERNMENT OF LAWS WITH AN INDEPENDENT JUDICIARY.

HON. JESSE B. ROOTE, BUTTE, MONT.

Protection is the purpose of government. Government is defined to be "the exercise of authority in the administration of the affairs of a state, community or society; the authoritative direction and restraint exercised over the actions of men in communities, societies or states." It is a state or body politic governed by one authority. Hamilton, in the Federalist, asks and answers the question: "Why has government been instituted at all?" His answer to this question is: "Because the passions of men will not conform to the dictates of reason and justice without constraint." Obedience to law is essential to the existence of government. Stability, morality and respectability are essential qualities of the laws of a government. Certainty of law is essential to its stability. Where the law is uncertain there is no law, is one of the maxims of our jurisprudence, the origin of which is lost in the dim mists of the past. The value of jurisprudence depends on a fixed and uniform rule of action. Herein lies the value of precedent. If bread would one day sustain and the next destroy life its value would be destroyed. It is another of our maxims that when the law fails to serve as a rule, almost everything ought to be suspected. Another of the ancient maxims of our jurisprudence is this: "It is a miserable state of things when the law is vague and uncertain." And again, law that is deficient is better than law that is uncertain, for things that are uncertain are held as nothing.

To define wrongs and provide remedies should be the first concern of government. This is evidenced by preambles to great state papers. A wrong that is once set in motion returns, like the boomerang, to the thrower. And so it is with unstable governments. Wherever the maxims of natural justice—and this is another way of saying the maxims of our jurisprudence—are respected there will be found a government of protection; otherwise it is one of spoliation and oppression. In every government of stability and protection will be found laws that are certain and fixed rules of official action.

Thus far I have only stated a few general principles with which every lawyer is familiar. I have mentioned these general principles for the purpose of making them the basis—the text, so to speak—of my remarks.

And here I must say, by way of preface, that I shall discuss these general principles—from which I shall deduce my subject, A Government of Laws with an Independent Judiciary, in the light of the

present day agitation among the people of the United States. I have come to speak to you, however, from the standpoint, or the viewpoint of a lawyer and not from that of a politician. I would be doing violence to my sense of propriety if I were intentionally to say anything to wound anyone who does me the honor to give me his attention. I cannot believe that anything that I will say can in any way offend any lawyer who prefers his profession to the vocation of politics. The things I shall say, I am persuaded to believe, concern vitally every member of our profession. I have no thought of awakening any political animosities. It may be that not all of you may agree with what I shall say, and that some of you may think, when I shall have concluded, that I have entered the domain of politics, an unseemly thing to do on an occasion like the present. But if there be any present who shall hold such views, pray remember that the matters I shall discuss concern patriots, and especially the members of the profession of law. The questions that naturally come within my subject are questions that every lawyer should meet with courage and firmness. I pray that you will accept my assurance that all that I shall say will be said in kindness and with the single purpose of awakening in your minds thoughts that should engage every lawyer who loves his profession and his country.

I will now enter upon the discharge of the agreeable duty that I have, at your courteous invitation, undertaken. In doing so I bespeak your patience and your sympathy.

An exhaustive development of a subject of such far reaching importance as that I have chosen, in the brief time necessarily imposed by the unavoidable limitations of this occasion, is to me manifestly hopeless. I shall endeavor, however, to treat some matters within the scope of my subject in a way that I hope will furnish food for reflection.

You must have perceived already, Mr. President, that I favor a government of laws, and that I am opposed to what is called, in that lately coined phrase, the recall of judicial decisions. I am, also, opposed to the recall of judges and to any other interference with our judiciary, except the removal of judges who are either corrupt or wanting in that courage and firmness that should characterize every judicial officer. Indeed, without an independent judiciary, ours would not be, in a full and proper sense, a government of laws. I shall endeavor, as I go along, to make this manifest.

Courage is as much required in a judge as religion in a priest or minister of the gospel,—courage to declare the law correctly regardless of conditions or environments. This courage is required to insure that uniform application of the law that makes it the same under all circumstances, and hence to insure certainty in the admin-

istration of justice. Permit me to attract your attention here to the memorable words of the great chief justice, John Marshall, on the occasion of the trial of Aaron Burr. But first let me draw your attention to the circumstances under which the words I am about to quote were used. I can best do this in the language of William Henry Rawle, Esq., who delivered the oration at the unveiling of the statue of Chief Justice Marshall, at Washington, May 10, 1884.

"The story of Aaron Burr," says Mr. Rawle, "with all its reality and all its romance, must always, in spite of much that is repugnant, fascinate both young and old. When, in a phase of his varied life, he who had been noted, if not famous, as a soldier, as a lawyer, as an orator, who had won the reason of men and charmed the hearts of women, who had held the high office of Vice-President of the United States, and whose hands were red with the blood of Hamilton —when he found himself on trial for his life upon the charge of high treason, before a judge who was Hamilton's dear friend, and a jury chosen with difficulty from an excited people, what wonder that, like Cain, he felt himself singled out from his fellows, and, coming between his counsel and the court, exclaimed: 'Would to God that I did stand on the same ground with any other man.' And yet the impartiality which marked the conduct of those trials was never excelled in history. By the law of our mother country to have only compassed and imagined the government's subversion was treason; but, according to our constitution, 'treason against the United States shall consist only in levying war against, or in adhering to their enemies, giving them aid and comfort;' and can it be, said Marshall, that the landing of a few men, however desperate and however intent to overthrow the government of a state, was a levying of war? It might be a conspiracy, but it was not treason within the constitution—and Burr's accomplices were discharged of their high crime. And upon his own memorable trial—that strange scene in which these men, the prisoner and the judge, each so striking in appearance, were confronted, and as people said, 'two such pairs of eyes had never looked into one another before'—upon that trial the scales of justice were held with absolutely even hand. No greater display of judicial skill and judicial rectitude was ever witnessed. No more effective dignity ever added weight to judicial language. Outside the court and through the country it was cried that 'the people of America demanded a conviction;' and within it all the pressure which counsel dared to borrow was exerted to this end. It could hardly be passed by. 'That this court dares not usurp power, is most true,' began the last lines of Marshall's charge to the jury. 'That this court dare not shrink from its duty is not less true. No man is desirous of becoming the peculiar subject of calumny. No man,

might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he has no choice in the case, if there is no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country who can hesitate which to embrace.' That counsel should, he said, be impatient at any deliberation of the court, and suspect or fear the operation of motives to which alone they could ascribe that deliberation, was perhaps a frailty incident to human nature, 'but if any conduct could warrant a sentiment that it would deviate to one side or to the other from the line prescribed by duty and by law, that conduct would be viewed by the judges themselves with an eye of extreme severity, and would long be recollected with deep and serious regrets.'

"The result was acquittal, and as was said by the angry counsel for the government, 'Marshall has stepped in between Burr and death!' Though the disappointment was extreme, though started from the level of excited popular feeling, it made its way upward till it reached the dignity of grave dissatisfaction expressed in a president's message to congress, though the trial led to legislative alteration of the law, the judge was unmoved by criticism, no matter from what quarter, and was content to await the judgment of posterity. Never, in all the dark history of state trials, was the law, as then it stood and bound both parties, ever interpreted with more impartiality to the accuser and the accused."

Had the recall been in vogue at the time of Burr's trial, John Marshall would have been recalled, and what a loss it would have been to the American people, few can estimate! Our government of laws would have long since disappeared had it not been for the constitution and its great expounder, John Marshall, unless another Marshall had saved the constitution. Congress would long ago have set aside the constitution, and in the place of a constitutional government would have substituted one of men.

The case of Burr illustrates more forcibly than any other that I can call to mind at this time, the wisdom of ,and the security in a government of laws. If ours were a government of men instead of a government of laws, the inhibition against ex post facto laws would be brushed aside by the momentary passions of the people, and a law would be made for each particular case, and it would be framed to suit the excited passions of the people. In other words, anarchy, or chaos, which is another word for anarchy, would reign. No man would be safe. Life, property, reputation would be at the mercy of the clamoring, unreasoning mob!

Here, Mr. President, I am constrained to remark that legislatures are sometimes as wanting in reason as is an excited public. History

furnishes many instances in proof of this. More often, though, for want of courage to do the right and wise thing, legislatures unwisely yield to the pressure of the storms of party rage or popular caprice. The judgment of posterity always condemns such acts by legislatures.

The judiciary should be free from all interference by the legislature. There are several ways in which legislatures have been wont to coerce the judiciary. The distinction between legislative and judicial functions is that the former is to make the law, for future cases, and that the latter is to declare it as to cases which have already occurred. It is one of the fundamental principles of our constitution, and an important ingredient of a free government, that the legislative and judicial powers shall be kept distinct and separate. Likewise it is fundamental under our government that the power of making general laws for future cases shall never be placed in the same hands with that of declaring and applying it to particular and present cases. The union of these two powers in the same hands constitutes the worst of despotisms. The peculiar and distinguishing characteristic of despotism is that a man may be punished for an act, which when he did it, was not forbidden by law. While, on the other hand, it is the essence of freedom that no act can be treated as a crime unless there was a precise law forbidding it at the time it was committed. If a man is to be thus condemned, then indeed we have the form of a free government, but the substance of despotism.

Before such a rule is established let it be remembered that it is a two-edge sword. Let those who contemplate the making of such a despotic rule remember that power must often change hands in a popular government; that after every political struggle the victorious party comes into power, with resentments to gratify by the destruction of their defeated opponents. Let them remember that precedents by which actions innocent when done may be converted into crimes are the most convenient and effectual instruments of revenge and destruction with which a victorious party can be furnished. Let them beware how they give their approval to principles which may soon be turned against themselves; how they forge bolts which may soon be hurled against their own heads. In a popular government, such as ours, where power is fluctuating, where constitutional principles are therefore so important for the protection of the weaker party against the stronger, it above all things behooves the party in power to adhere to the principles of justice, lest by departing from them they furnish the provocation and the weapon for their own destruction.

I have said that there are several ways in which legislatures coerce the judges of our courts. One way is by the misuse of the law of impeachment. Here I must be permitted to digress long enough to

state that what I shall say on the subject of impeachment will have no reference whatever to the recent case that so much agitated the minds of the people living in that part of your state lying west of yonder beautiful and majestic range of mountains. If my remarks on this subject shall associate themselves in your minds with that case, it will be a mere coincident. I have no knowledge whatever of the facts in that case further than that I gleaned from the public press, which is not always reliable. Allow me to say, however, that the impression I gained from reading the newspapers was that the case was brought on because the learned judge gave a judgment in a suit in equity brought by the United States to cancel the citizenship papers of a man,—which judgment was the only one which an honest judge could have given under the circumstances. I must be permitted to say that I admire his courage and his fidelity to his duty in that case.

But, to resume, I want to make it clear that I find no fault with, and no criticism of, the provision in our federal and state constitutions for the impeachment of judges and other officers. It is the misuse of this law that I find myself unable to approve. What is the popular conception of this constitutional provision? Why, sir, it is that an officer may be impeached for anything that he may do that happens to be unpopular at the time. Forsooth, for playing chess on Saturday afternoon, if that innocent pastime fails to obtain the approbation of the majority of the people. And members of congress or of the state legislature, to gain the approbation of their constituents and make themselves popular, are willing to bring on a bill of impeachment. They are, in most cases, either without judicial minds or venal.

What is the constitutional description of those official acts for which a public officer may be arraigned before the high court of impeachment? In the federal constitution it is declared that the officers there named shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors. If a judge is guilty of treason or bribery or any high crime or high misdemeanor he should be impeached and convicted, and in this manner removed from office, but not for any act that does not fall within the definition of high crime or high misdemeanor. "Crime" and "misdemeanor" are technical terms, well understood among lawyers and defined in law.

Does not the court provided by the constitution for the trial of impeachments give us some idea of the grade of the offenses intended for its jurisdiction? Under the federal constitution it is the Senate of the United States that constitutes the high court of impeachment—a body that the fathers evidently supposed would collect within itself

the justice and the majesty of the American people. Was such a high court created to sit and scan and punish paltry errors and indiscretions too insignificant to have a name in the penal code, too paltry for the notice of a police court? This would indeed be employing an elephant to remove an ant hill.

Since the beginning of our national existence a large number of judges of state courts and a few federal judges have been impeached. A few were corrupt and deserved the condemnation of the people that was visited on them. In most cases, however, the impeachments were for acts that did not amount to impeachable offenses. Shall impeachments be brought on the mere caprice of an excited public, or must they not be on some known law of the country? An impeachment, to be legal, must without doubt be for some offense either of omission or commission against some statute of the United States or some statute of a particular state, or against some provision of the common law.

This subject of impeachment will serve, as well as, and perhaps better than, any other to illustrate the rule I stated in the beginning, that where the law is uncertain there is no law. And if the laws of a government are uncertain then that government is not a government of laws, but of men, as will be seen as I proceed.

I maintain, as essential to a free government, that no man should be criminally condemned except for the violation of some known law by which he was bound to be governed. Nothing is so necessary to the administration of justice as that the criminal code should be certain and known. Judges, as well as private citizens, should know precisely the path they are to walk in, and what they may and may not do. No sword should tremble over the head of a judge; nor should the ground be spread with snares and quicksand, that may appear fair to the eye of the traveler. Is there to be one rule of justice for a judge and another for a private citizen, so that while the latter is protected from surprise, from the malice and caprice of every man, and every body of men, and can be punished only for the violation of laws made known to him in advance, the former is to be exposed to punishment without knowing his offense, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the notions of a body of men? If so, a judge may thus be removed from his office for an act strictly legal, if a house of representatives, federal or state, according as the judge is a federal or a state officer, shall choose to consider such act impeachable. It was never contemplated by the framers of the constitution that the judiciary should thus be laid prostrate at the feet of the house of representatives. No judge should be placed in jeopardy to satisfy the clamor of an unthinking and unreasoning public. Can a legisla-

ture, federal or state, create offenses at its will, and declare that to be a crime, which, when done, was not a crime? It requires the concurrence of both houses of the legislature and the president, or the governor, as the case may be, to enact a law, except in those cases where it is passed by a two-thirds vote over a veto. If the house of representatives, of congress, or of a state legislative assembly, were to direct that an act heretofore not forbidden by law, should hereafter become penal, such declaration would be a mere nullity, unless duly sanctioned by the senate or the upper house of the state legislature, and approved by the president or the governor. Will they then be permitted, in the exercise of their power of impeachment, to create crimes and inflict serious penalties never before suspected to be criminal? If this be true then every valuable liberty of every impeachable officer is prostrated at the foot of the house of representatives. We have all heard, and with horror, of the Roman emperor who placed his laws so high on the pillars of the forum that the best eyes could not read them, but nevertheless severely punished any breach of them. The power sometimes claimed by the house of representatives to make anything criminal at their pleasure, is a thousand times more dangerous, more tyrannical. The laws of Caligula, though fixed on columns however high, might yet, by extraordinary efforts be deciphered; but here, if the congress is permitted to misuse the law of impeachment, officers of government must, to be safe, be able to foresee what will be the changing opinions of men on points of decorum. The rule of conduct lies buried in the bosom of futurity.

I come now to a consideration of the recall of judges. What is this proposition that is agitating the minds of the American people, and that is seriously proposed to be enacted into law? First, let me answer, it is not progressive, but is retrogressive. It is a proposal to turn back the pages of history, the cycles of time, for more than two thousand years and adopt an experiment that wrecked that government of pure democracy, the capital of which was the seat of ancient learning. This power of recall existed in Athens more than four hundred years before the Christian era, but never existed in a republican form of government until within the last five or six years. It is the weapon of unreasoning agitators and of demagogues. Our very sense of natural justice revolts against it. Actuated by jealousy, moved by malice, without reason or justice to support them, the personal or political enemies of a judge,—the dignity of whose position and office forbids him to take to the hustings in defense of himself—start a hue and cry about him that, like a ball of snow rolling down hill, increases as it goes on. The unfounded or greatly magnified accusations of enemies and agitators, the groundless or senseless cry of demagogues, the poisonous whisperings of calumny, prepare the voters to

complete the destruction of reputation. Voters who have no knowledge of any grievance; without an impartial hearing; without evidence, for calumny is not evidence, except of malice in the heart of him who utters it; without reason or the semblance of justice,—exercise the arbitrary and abhorrent power of recall. Behold the result! An honorable and courageous man has been stricken down to satisfy the clamor of the mob; all that was dear to him, save honor, has been ruthlessly snatched and torn away, as were the insignia of rank and authority from the uniform of that gallant, courageous, patient officer of the French army—Alfred Drefus! Contemplate, my friends, this picture of the exercise of the power of recall. It is not overdrawn. It is just such as we may expect to see, and what we wi'l in fact see, if the recall of judges is adopted by the American people. In this manner will honorable judges be disgraced and removed from office. When reason is dethroned; when calumny, passion and prejudice are in the ascendent,—the rage of the storm is sure to be great, its devastation terrible!

Is it not, Mr. President, one of the maxims of natural justice, as well as of our jurisprudence, that no man shall be condemned unheard and without a fair trial? Are the American people seriously to contemplate the abandonment of this great principle of natural justice, this polestar that has led us for so many years along paths of safety, this bulwark of our liberties? Ah! let it be hoped that the American people, who, as a whole, have always wanted to be just, reflect before they take so terrible a step. I seem now, Mr. President, to hear an answer from a certain quarter, that a judge against whom the recall is invoked, may set forth, under the proposed law, his defense in two hundred words! Am I doomed to hear this from a lawyer, from one who has spent his life in the study of that science the aim of which is justice between men! Cannot every one see, upon a moment's reflection, that it is impossible within the compass of two hundred words, or even two thousand, to administer an antidote to the poison of the calumny that flows from a single word—corrupt? When the breath of suspicion is whispered in one word against the chastity of a virtuous maiden, a thousand words will not suffice to answer and silence it. And so it is with false accusations and vile calumnies hurled against a judge by one whose heart is filled with malice and who is the product of the lowest and most depraved elements of fallen humanity. We are accustomed to trials of another sort; trials where reason and justice rule; trials by impartial jurors before an impartial court; trials where the witnesses are under the restraint and the sanctity of an oath; trials in which accusations may be answered, witnesses cross-examined and evidence heard and weighed; trials in which the law—not made for that one occasion, but made long before—is

adhered to and is declared by a judge who is acting under the restraint of an oath and whose learning enables him to apply the definite and fixed principles of the law. I grant that there are corrupt judges—but, be it said to the credit of the bench and the bar, they are few when compared to the whole number of judges in the United States. If a judge is corrupt he should be removed from office and punished. But let it be done in an orderly, fair and constitutional manner. If impeachment is not a practical method, then let another be provided, but let it be fair and let it be constitutional.

There are a hundred other reasons why the recall of judges, in the manner proposed, is unfair, inexpedient, unwise. But time will not permit of their mention at this time. Mr. President, the recall of judges is subversive, destructive, of every principle on which the fathers established our government,—those principles that, for more than a century of national existence have insured our liberties, have secured us in our rights, have vouchsafed our happiness and our prosperity!

I wish that I could attract your attention to, and point out to you all the indicia of this gangrene of anarchy. But I confess to not being able to accomplish so vast an undertaking, even if time permitted. Allow me, however, time to mention briefly one or two more.

What would be the effect of the incorporation into our laws of this proposed recall upon the conduct of the judges themselves, and the necessary resulting effect upon the people? It would make the judges disregardful of the fixed and established rules of law. Judges would appreciate that in order to be secure in their positions they would have to render their decisions not according to those fixed and established principles and rules of law that time and experience have proven to be wise and wholesome,—but according to the whims, the desires, the caprices, the fleeting passions, the demands of unreasonable agitators and demagogues. Thus decisions and judgments would be ever varying according to the changing notions of those who would have the power to recall. No man would be sure of justice; no man would be secure in his person or property. Law would not be uniform; it would be ever changing and uncertain. And we have seen that where the law is uncertain there is no law. A new law would be made for each case, not beforehand but at the time of trial and after the occurrence of the events that might be the subject of investigation and adjudication. All laws would be ex post facto laws which thoughtful men know would be destructive of our liberties. Ours would then be a government of men and not of laws. Chaos would reign; passion, which is ever changing, would be the controlling factor in all decisions. Reflect a moment, and compare such a government with the one established by our forefathers in which reason is the rule, protec-

tion and justice the aim. Rather than to live under such a government as the recall of judges would change ours into I would prefer to take my chances in Turkey.

What student of history is there who does not recognize the evils and the tyranny of a pure democracy? A republic is a state in which the sovereignty resides in the people, but in which the administration is lodged in officers elected by and representing the people. It is a *representative*, in contradistinction to a *pure* democracy. It is a state that is ruled by representatives of the people according to convention, according to established, fixed and certain laws. While in some instances the power to recall judges has been retained by monarchs and despots. I cannot recall any instance since ancient days where the recall of judges by popular vote has prevailed. Not until within the past few years, and here in what we are wont and pleased to call the most enlightened government of either ancient or modern times do we find this obnoxious measure seriously advocated.

The pure and impartial administration of justice is of all things the most important of the people. Who shall be governor of the state or president of the federal government, or what tariff shall be exacted or general laws passed, occupy the particular attention of politicians. These things concern but seldom the happiness of the great mass of the people. But the impartial administration of law between men comes to every man's door, and is essential to every man's happiness and prosperity. For this reason I regard the judiciary the most important one of the three departments of government, and its independence and purity of the most interesting consequence to every man.

While our judges are fully protected from the influence of favor or fear, the rights of the people cannot be very unsafe. But if judges are to ever be exposed to the threats of those influential with the majority, and to be condemned by the mere voice of prejudice, can they hold the scales of justice in equipoise with firm hands? No. If the nerves of a judge are of steel they must tremble in so perilous a situation. In England the complete independence of the judiciary has for generations been regarded, and has proven to be, the only sure safeguard of true liberty, and the only means of securing known and uniform laws that act upon every man alike. I have heard it suggested that while this independence is very necessary under a monarchy, to secure the people against the oppression of those in power, yet the same reasons for it do not exist under our republican government. It is argued that it is inconsistent with the nature of our government for any part of it to be independent of the people from whom all governmental power emanates. I maintain the reverse of this. If I were asked in what kind of government, a monarchy or a republic, the independence of judges is most essential, I would unhesitatingly say in the

latter. All governments require permanent principles to give them stability and character. History shows that the want of this has been the great deficiency in republics. No faith can be given, at home or abroad, to a people whose policies are constantly changing with popular opinion. But if the judiciary is stable and independent and the rule of justice rests upon certain laws and upon known and fixed principles, it gives a security and character to the government which are essential to its successful intercourse with the outside world and in its internal affairs. This independence is necessary to secure the people against oppression. All history demonstrates that tyranny and oppression are found not in monarchies alone, but in republics as well, both ancient and modern. In republics and democracies oppression springs from the impulse of some sudden passion or prejudice, while, generally, in monarchies it is deliberately planned and carried out. The people never destroy deliberately, and usually return to reflection, and therefore justice, if passion is not kept inflamed. But while the fit is on their spoliation and cruelty are more terrible than that of the most monstrous tyrant. It is to protect them from the violence of their own passion that it is necessary to have fixed and certain laws and a firm, courageous and independent judiciary that is both able and willing to stay the frenzy of an excited populace.

If a Seneca has been killed under the ferocity of a Nero, a Socrates has been destroyed under the delusion of a republic. An independent judiciary, firm and courageous, with fixed and certain laws, would have saved one from the fury of a tyrant, and preserved the other from the madness of a people.

Remember that it was Alexander Hamilton who, after propounding this question: "Why has government been instituted at all?" made this answer: "Because the passions of men will not conform to the dictates of reason and justice without constraint." (Federalist, No. 15). In establishing our present government it was the purpose of the fathers not only to free themselves from the tyranny of the English government, but to protect themselves and their posterity against the tyranny of an unrestrained democracy. We are accustomed to hear a jargon about the sovereignty of the people, and that nothing in a republic should be independent of them. This is a hackneyed phrase, and there is none in our language more abused or more misunderstood. I hold that the just and legitimate sovereignty of a people is truly a great thing. It consists in the full acknowledgment that all power originally emanated from them, and that all responsibility is finally due to them. This sovereignty does not, however, consist in a right to interfere with the regular and legal operations of their representatives who have been intrusted with the management of public affairs, who are carrying out policies and pro-

ceeding according to fixed and definite rules previously provided for them. Having delegated their power, having distributed it for various purposes into various channels, and directed its course within certain well defined limits,—they have no right to impede its orderly exercise by those to whom it has been delegated. Having parted with their power under certain regulations and restrictions, they are done with it for the present—they are bound by their own act. If this be not so what government have we? What rule of conduct? None—but are in a state of savage anarchy and confusion.

A wise man will not trust himself to act upon matters of great concern and importance while in a state of great excitement when his passions are aroused. He will await the return of reason and composure. Why then should the people as a whole, among whom are foolish as well as wise men, trust themselves to act during a time of great party rage, public excitement, when the passions of men are aroused, in matters of great moment or when the rights, the property, the liberty, the reputation or the life of a citizen is the stake?

Our federal constitution, upon which all of our state constitutions are patterned, restricts the powers of the three branches or departments of government. To this fact is due the great importance of the judicial department. And to this fact also is due the necessity of the judiciary being separate from the other departments, and absolutely independent of them and the people. Under governments having constitutions that do not limit the powers of the executive and legislative departments the courts are only called upon to construe and apply laws that are made and changed from time to time by the legislature. But our courts, under our form of government, have the added and most important duty of protecting the people against encroachments upon their rights by the executive and the legislature—both state and federal. Illustrations of this are familiar to every lawyer. This function of our courts is more essential to the preservation of the government itself, and its constitution, than any other feature of our government. To insure the strength and virility of our judicial department of government, and its effective discharge of these important duties, its complete independence is absolutely essential. The independence of the judiciary is therefore necessary to the protection of the citizen and the preservation of our form of government.

The judicial recall would fill the judicial offices with inferior and unscrupulous men. What man of self respect would be willing to accept a judicial office if he might be removed from office and humiliated, for no just cause, by the whims or caprice or prejudice of an unreasoning public? No man who would be unwilling to set aside the fixed and settled rules of law; no man who would be unwilling to set aside positive law and engage in judicial legislation, no man who

would be unwilling to violate the sacred rights of another, no man who would be unwilling to make his decisions and judgment satisfy the demands of the clamoring, excited mob, would dare accept a judicial office. No judge who would hold the scales of justice in equipoise with a firm hand could hold his office. Such impartiality as marked the conduct of Marshall at the trial of Burr would set the recall machinery in motion and bring about the removal of him who would refuse to disregard law and satisfy the demands of the crowd. Thus would our judiciary, instead of being strengthened, instead of having its standard raised, instead of being respected, be degraded and held in scorn and reproach.

Am I to be answered that judges, under the proposed recall, would not yield to the temporary passions of the people? If so, my rejoinder is that history affords ample proof that they would. Besides, our knowledge of human nature and the weaknesses of man must convince us of this. There are many instances in history of judges who, in utter disregard of law and in violation of sacred personal rights, even where the recall did not prevail, in order to court the favor and secure the approbation of the multitude, yielded to their unreasonable, unlawful and unjust demands. For want of time one instance only can be noticed. I refer to the trial of Jesus of Nazareth before Pontius Pilate. The story of this trial is best told in the language of St. Luke, as follows:

"And the whole multitude of them arose, and led him unto Pilate.

"And they began to accuse him, saying, We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ a king.

"And Pilate asked him, saying, Art thou the King of the Jews? And he answered him and said, Thou sayest it.

"Then said Pilate to the chief priests and to the people, I find no fault in this man.

"And they were the more fierce, saying, He stirreth up the people, teaching throughout all Jewry, beginning from Galilee to this place.

"When Pilate heard of Galilee he asked whether the man were a Galilean.

"And as soon as he knew that he belonged unto Herod's jurisdiction, he sent him unto Herod, who himself also was at Jerusalem at that time.

"And when Herod saw Jesus he was exceeding glad for he was desirous to see him of a long season, because he had heard many things of him; and he hoped to have seen some miracle done by him.

"Then he questioned with him in many words; but he answered him nothing.

"And the chief priests and scribes stood and vehemently accused him.

"And Herod with his men of war set him at nought, and mocked him, and arrayed him in a gorgeous robe, and sent him again to Pilate.

"And the same day Pilate and Herod were made friends together; for before they were at enmity between themselves.

"And Pilate, when he had called together the chief priests and the rulers and the people,

"Said unto them, Ye have brought this man unto me, as one that perverteth the people: and, behold, I having examined him before you, have found no fault in this man touching those things whereof ye accuse him:

"No, nor yet Herod: for I sent you to him; and, lo, nothing worthy of death is done unto him.

"I will therefore chastise him, and release him.

"(For of necessity he must release one unto them at the feast).

"And they cried out all at once saying, Away with this man, and release unto us Barabbas:

"(Who for a certain sedition made in the city, and for murder, was cast into prison).

"Pilate therefore, willing to release Jesus, spake again unto them.

"But they cried, saying, Crucify him, crucify him.

"And he said unto them the third time, Why, what evil hath he done? I have found no cause of death in him: I will therefore chastise him, and let him go.

"And they were instant with loud voices, requiring that he might be crucified. And the voices of them and of the chief priests prevailed.

"And Pilate gave sentence that it should be as they required.

"And he released unto them him that for sedition and murder was cast into prison, whom they had desired; but he delivered Jesus to their will."

Doubt ye, my friends, that similar scenes would be enacted under the recall of judges? No, they would be of common occurrence.

I hear in some quarters the argument that if judges are recalled unjustly they will be vindicated by posterity. Yes, that may be true, but the judgment of posterity is slow in forming, and the unfortunate judges who would be humiliated and wronged would not be here to learn of their vindication.

Let us reflect upon the words, bearing directly upon the independence of the judiciary, of James Madison and Alexander Hamilton, two sages whose Federalist papers give us the best and clearest understanding of the intention of the framers of the Constitution. Mr. Madison, in writing about the tyranny of a temporary majority, says:

"From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will in almost every case be felt by a majority of the whole, a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property, and have in general been as short in their lives as they have been violent in their deaths.

"A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it differs from a pure democracy and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union."

And the following is from the pen of Mr. Hamilton:

"The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this all the reservation of particular rights or privileges would amount to nothing.

"This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humors which the arts of designing men or the influence of particular conjunctures sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more delicate reflection, have a tendency in the meantime to occasion dangerous innovations in the government and serious oppressions of the minor party in the community."

In 1829, when John Marshall was seventy-four years old, he was chosen a member of a convention to revise the constitution of his native state. In that convention, upon the subject of judicial tenure he spoke, as it is said, "with the fervor and almost the authority of an apostle." No one in that body of great men knew so well as he how a judge, standing between the powerful and the powerless, is bound to administer justice to both, and that, for this reason, his own

position should be beyond the power or reach of any mortal man or set of men. This is what he said:

"Advert, sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting—between the most powerful individual in the community and the poorest and most unpopular. It is of the last importance that in the performance of these duties he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depend upon that fairness? The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent with nothing to control him but God and his conscience? * * * I acknowledge that in my judgment the whole good which may grow out of this convention, be it what it may, will never compensate for the evil of changing the judicial tenure of office. * * * I have always thought from my earliest youth till now that the greatest scourge an angry heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent judiciary."

For those who may think that Madison and Hamilton and Marshall lived too long ago for their words of advice to be followed in this day of "progressiveism," let me quote a short paragraph from the pen of an up-to-date progressive. It is that scholarly statesman who now, as its nominee for the great office of president, bears aloft the standard of the Democratic party, Woodrow Wilson, whose language I borrow:

"The recall of judges is another matter. Judges are not lawmakers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and freedom, is of the first consequence to the stability of the state. To apply to them the principle of the recall is to set up the idea that the determinations of what the law is must respond to popular impulse and to popular judgment. It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established."

The judicial recall, if adopted, would not only discourage but prevent lawyers possessing high ideals from accepting judicial offices. No such lawyer would permit himself to be placed in a position where he would have to decide cases contrary to his conscience or else suffer the humiliation and disgrace of being removed from office. The adoption of judicial recall would be a return to the tyranny of a pure

democracy. It is contrary to the fundamental principle of a republican form of government, which is to protect the people from the tyranny of the executive, the minority from the tyranny of the majority. One of the principles of a republican form of government is that the people, in whom the sovereignty resides, shall manage the affairs of government only through representatives duly selected for that purpose. To the maintenance of such a government it is essential that there should be a separate judicial department that is independent not only of the executive and legislative departments, but also of the majority of the people. The judicial recall would destroy both the representative character of the government and the judicial system.

Muck-raking newspapers and magazines to the contrary, I nevertheless maintain that it is not necessary to disturb the independence of the judiciary in order to settle the economic questions that now agitate the American people or the controversy between labor and capital.

I must notice now, Mr. President, for a moment only, that other and wilder proposition that has lately been advanced to foist upon the American people what is termed the recall of judicial decisions. If this proposition had not come from a man whose prominence and previous connection with the government in the most exalted office within the gift of the people demand for him respectful attention I would not deem it necessary or dignified to even mention the subject, so perfectly ridiculou and sily it is.

To adopt this measure would be to compass the destruction of our republican form of government at one bound, in one fell swoop. Most all that I have said about the recall of judges applies with equal, if not greater, force to this silly, though dangerous, proposal. Picture to yourselves, please, the effect of such a power in the people, the working of such a law, if law it could be called! First, it would be a repeal, in effect if not in terms, of the constitution—of every provision in that title deed to our liberties. There would no longer be any restrictions upon the passage of laws, upon the executive, upon anything or anybody—except the restrictions that would be born of the fear of the terrors and ravages of unrestrained anarchy! This subject is not worthy of the serious consideration of men of sense, and I will waste no further time with it. I prefer to leave it where I found it, with the gentleman whose prowess as a hunter of wild and rapacious animals in the jungles and on the plains of Africa will be, for him, with posterity, a greater claim to distinction than will be his bringing forward this revolutionary doctrine for the serious consideration of an intelligent people. Under such a state of anarchy as the recall of decisions would surely bring about we might expect to see such scenes re-enacted as the people of Rome were accustomed

to see under the worst of the emperors. The annals of the emperors show a various picture of human nature which we would vainly seek among the characters of modern history. We may trace in the conduct of the emperors of the Roman empire the utmost lines of both vice and virtue—the meanest degeneracy and the most exalted perfection. The unparalleled vice of the unworthy successors of Augustus and the magnificent theater on which they were enacted saved them from oblivion. The unrelenting Tiberius, the ferocious Caligula, the weak Claudius, the profligate and cruel Nero, and the beastly Vitellius, are now condemned to everlasting infamy. So let it be with this infamous doctrine.

Though not much accustomed to talk about the will of the people, I know of no one who bows with more reverence to that will, when constitutionally declared, than I. But, Mr. President, shall we give up the constitution, this sheet anchor of personal rights, to commit ourselves to the storm of party rage, personal animosity and popular caprice? Shall we throw away this great landmark, established by the wisdom and the patriotism of the sages who brought forth our republican government? Instead of having our sacred rights secured by fixed and known principles of law, shall we leave them to be frittered away by the ever varying passions of the moment? No, sir, I hope not. Let us remember that unjust principles that are adopted for particular purposes are two-edged swords, which will rebound on the head of him who uses them; and that justice, although it may be an inconvenient restraint on us when we are strong, is the only sure rampart behind which we may hope to find protection when we become weak. Power which depends on popular favor is, Mr. President, of all things under the sun the most fleeting and transient, it being sure, from time to time, to change hands. When those who now control the thunder of the power of recall shall themselves occupy, as they soon may, a situation where they may be stricken down by its bolts, they will be glad to invoke, and unless the people now set a great example of good government, will invoke in vain those constitutional securities which have insured our national happiness and prosperity for more than a century and a quarter. These considerations of themselves, Mr. President, must strike the mind with a force that cannot be increased by any efforts of mine. It is sufficient merely to bring them into the view of reasonable citizens.

The duty that is imposed on judges is at all times delicate, and in cases where life or liberty may be affected, where reputation depends on the issue, the judge's duty becomes peculiarly arduous to one possessing an honorable and a generous mind. The most delicate and most embarrassing of all situations must be that of a judge presiding upon the trial of a person who, from political or any other

cause, may have excited hostile feelings in his mind. It is then that an honorable judge most dreads the influence of his passions. It is then that he needs fixed laws that will support his conduct, his decisions and his judgment, lest he should afford ground for the suspicion that he gratified his resentments under the semblance of executing the law.

Fixed rules of law are of even greater importance to one called upon to answer a charge of having committed crime. When the rules of law defining offenses are certain and fixed, then is every man safe, because he may know the law. But if in each particular case that is to be the law which the passions, the prejudices or the political views of the moment may dictate—then indeed are we in a desperate situation, and was the blood of our fathers shed in vain. So monstrous a principle cannot be endured, and I hope will not receive even the temporary sanction of the American people.

In governments such as ours there will ever be a conflict of parties. Must a judge be in favor of the ruling power, whether right or wrong? Or, must he, anticipating the triumph of the minority, however improper their views may be, act with them? And shall a judge, by conscientiously performing his duty, and thereby offending one or perhaps both parties, be made the victim of the one or the other, perhaps of each, as they successively have power? I hope not. A judge should feel safe so long as he violates no law, so long as he discharges his duty in an impartial manner, regardless of whom he may displease thereby.

To a judge it must be the sweetest consolation that when he has sentenced a fellow citizen to dishonor and disgrace, he has merely pronounced the decision of the law, rather than his own. This fact must soothe his mind under the anguish which it must feel from looking upon another's distress. Who is there, I ask, who would want our judges to court the applause of the auditors rather than have them act from principle? No one, I hope. Who would wish them to be popular judges, who look forward in all their decisions not for the approval of the wise and good, of their conscience—but of the rabble, or any prevailing party? The American people have been wont to boast of theirs as a government of laws, but it cannot be such unless the laws are impartially, without regard to popularity, carried into execution. Will judges be permitted to say: "This law I will execute, and this I will not; because in the first case the law is popular, and in the other it is not?" No. The security of our most sacred rights depends on us having judges who will with firmness and courage, even sternness, discharge their duties impartially. It is the duty of judges to enforce the laws regardless of how unpopular they may be to any portion of the community. If the holy sanctuary of

our courts is to be invaded by party feeling or popular prejudice; and if justice is to suffer her garments to be stained by the foul venom of political bigotry, we may indeed fear the ruin that will surely follow.

If time be measured by the life of nations it was not so very long ago that the fathers established on this Western hemisphere a government upon principles that had then been untried in political science—and that government was looked upon by friends with anxiety, by enemies with open derision. A little more than a hundred years have passed since then; and now the result of the experiment of the fathers is open to the contemplation of the world. The republic, born of patriotism and a love of liberty, and reared aloft upon the principles of the constitution, still stands, exceeding the hopes of its founders, silencing by its achievements the doubts of the incredulous and the derision of its enemies. It stands today, in all its majesty, surpassing in grandeur the most renowned governments of modern as well as of ancient times. After passing through the vicissitudes of political strife of more than a century the republic is still united, has the same protecting constitution, and is so strong as to banish all fear of attack from without, and be secure from all dangers from within, except the perils of degeneracy!

Conscious of having detained you much too long, my apology is my zeal for the cause in which I speak. In conclusion, let me express the hope that the bar of this country, in this hour of peril, will not be found wanting in the discharge of the duty that rests upon us—the duty of staying the hand of anarchy masquerading under the form and in the name of the Recall of Judges—the duty of preserving to ourselves and our descendants a Government of Laws, and an Independent Judiciary.

REPORT OF COMMITTEE ON OBITUARIES.

Hon. W. T. Dovell, President of the Washington State Bar Association:

DEAR SIR: Your Committee on Obituaries begs leave to report that since the adjournment of our Association at Spokane last year, it finds that the following named twenty-one members of the Bar of Washington have passed away:

[redacted]

ALBERT J. TENNANT.

August 19, 1911, Albert J. Tennant, junior member of the law-firm of Roberts, Battle, Hulbert and Tennant, of Seattle, died in that city, following an operation for appendicitis six days previously. Mr. Tennant was born in New Zealand in 1877, and was brought to Washington by his parents when he was about four years old. The family settled in Clallam county and later moved into King county. He was a graduate of the Seattle high school, and he studied in the University of Washington in 1896 and 1897. He became a law clerk for the firm of Ballinger, Ronald and Battle. In 1902 he was admitted to the bar. He remained in the same office until the time of his death; the firm meanwhile undergoing changes by the retirement of Judge Ballinger to become commissioner of the general land office, and subsequently to become in March, 1909, secretary of the interior; and the retirement of James T. Ronald from law practice to become a judge of the superior court of King county.

Shortly after his admission to the bar Mr. Tennant was married to Miss Sina Johnson, of Portland, who survives him.

At a meeting of the Bar of Seattle to pay tributes to the memory of Mr. Tennant, Judge James T. Ronald said:

"He was the best friend I had. Fourteen years of his life and mine were spent in close association.

"I recall in 1895 when a boy came to us and said that he wanted to become a lawyer. I did not need anybody. Times were hard. He did not want anything. He asked for nothing but a chance. I was not favorably impressed with him. I am 56 years old, and I have never had a death outside my family that so affected me.

"I told the boy that the road was rough and rocky and full of blind and false trails and paved with lost hopes and bitter disappointments.

"He said, 'I am willing to try.' He never hesitated a minute.

"He did not try to be admitted to the bar until he had been in the office six years, and a member of the supreme bench told me he passed the best examination of any applicant at that bar.

"In the first year I discovered that Albert was quick and could act in an emergency on his own initiative. If he was told to serve papers he served them. And if he made a mistake on the spur of the moment in his early years he called us up and told us about it. Albert Tennant never lied.

"When he started with us he was carrying two newspapers, coming late in the morning and leaving late in the evening. At the end of a year I gave the boy enough to drop one paper. At the end of a year and a half I gave him a little more, not more than $20 or $25 a month, and he dropped both papers.

"He was faithful in study. He was as regular in that office as the clock. There never was a better student than Albert Tennant.

"When the firm of Ballinger, Ronald & Battle was formed, I asked my partners to let me take Albert over with me. They did not know him then, but they soon did. Soon we began to raise his salary, but Albert Tennant never asked for a raise. He never complained of what he was getting.

"One day Judge Ballinger called Albert into his office after consulting Judge Battle and me. Judge Ballinger said:

"'Albert, from this day you are a full member of this partnership.'

"Albert could not say anything. Albert was not a gusher. He always showed by his actions his appreciation.

"I remember the curl of his lip, and a tear came into his eye. He said, 'I did not expect that. I do not deserve it.' But he did.

"Albert Tennant was quick to think and that accurately. He had the utmost confidence in his opinion when he had formed it. I never knew his superior in that respect. He was a man of action when he made up his mind. He achieved success by that characteristic.

"I have tried a great many cases, big and little, with a great many lawyers, and I would rather have Albert Tennant at my side in a heavy, complicated law-suit than any man I ever knew."

WILLIAM H. FLETT.

On the night of September 5-6, 1911, William H. Flett, associated in the practice of law at Seattle with Charles E. Shepard, died in that city. He was born May 10, 1856, at Somers, Kenosha county, Wisconsin. He was graduated from the University of Wisconsin in

1884. He entered upon the practice of law at Merrill in that state, and served that town for five years as its attorney. In 1897 he was elected as a member of the legislature of Wisconsin and was re-elected for the following term. In 1906 he came to the Pacific Coast to investigate some industrial projects in the State of Washington and in British Columbia. He decided to remove to this state, and he settled in Tacoma. He afterwards went to Seattle and entered into partnership with Mr. Shepard. His wife survives him. In Wisconsin he was an ardent supporters of Robert M. LaFollette; and in this state he was an active leader in the same line of politics and one of the most earnest supporters of Senator Miles Poindexter.

W. E. PARKER.

October 2, 1911, at Seattle, W. E. Parker passed away. He was only twenty-five years old. He was a graduate of the University of Washington, in which he was a brilliant debater. He was a very promising young lawyer, and his career was cut short by a surgical operation which he felt that he must undergo.

MEGGS D. WOOLF.

At Tacoma, on October 5, 1911, Meggs D. Woolf passed away. He was born in the town of Delmore, New York, September 20, 1846. At the commencement of the Civil War he was living in the town of Burr Oak, Michigan; and although only fifteen years of age, he enlisted in Company "K," Seventh Regiment of Michigan Volunteer Infantry, in which, and in the Third Company of the Second Battalion of Veteran Reserve Corps, he faithfully served for three years. On May 21, 1874, while he was studying law, he was married. In 1876 he was admitted to the bar. In 1879 he removed to Girard, Kansas, where he practiced law until the autumn of 1881, when he removed to Huron, South Dakota. He remained at the latter place until 1889, when he removed to Tacoma. He spent one year in the State of Idaho; but, with this exception, he practiced law in Tacoma until his death. He was much esteemed by his brethren in Tacoma.

HARRY A. FAIRCHILD.

Early in the morning of October 8, 1911, Harry A. Fairchild, a member of the Washington Public Service Commission and one of the best known lawyers in the state, suffered a sudden stroke of apoplexy and expired. He was born in Ontario, Canada, in 1858. In 1883 he was admitted to the bar at Fargo, North Dakota, and the next year he came to Washington and located in that part of the City of Bellingham which was then known as Old Whatcom. Two years afterwards he was elected prosecuting attorney of Whatcom and Skagit counties. His activity and ability in politics brought him into general notice throughout the state. He served in the house of representatives of the state legislature in 1901. In 1904 he became the leader of the dominant Republican element of that party in Whatcom county and was quite influential in securing the nomination of Albert E. Mead for governor. When the Railroad Commission was created Governor Mead named Mr. Fairchild as chairman of that body. Governor Hay appointed him to the Public Service Commission, in which it was generally recognized that he rendered diligent, faithful and important service to the state; indeed, he may be regarded as a martyr to his public services. He was married on November 15, 1885, to Miss Georgia A. Crockett, who bore him a son, Muir Fairchild. His death was deeply mourned throughout the state.

DAVID STEWART.

At Chehalis, in Lewis county, October 19, 1911, David Stewart died. He was born in Glasgow, Scotland, in 1846, and came to America when a young man. He studied law in Bismarck, North Dakota, and practiced in that city. He came to Chehalis in 1890 and shortly afterwards entered into law partnership with Mr. W. A. Reynolds. In 1894 he was elected mayor of Chehalis and held this position for seven consecutive terms. In 1901 he was elected prosecuting attorney of Lewis county, and attracted general attention by his vigorous prosecution of what were known as the tax title cases. He was married in 1904 to Miss Sadie Packer of Portland, who survives him, together with a five-year-old son.

ALBERT D. AUSTIN.

At Everett, on December 1, 1911, Albert D. Austin, who had practiced law in Snohomish county for about twenty years, died of heart trouble. He was born in LaPorte, Indiana, August 31, 1855. He removed thence in 1869 to Iowa, and the next year to Grand City, Missouri, where he learned the printer's trade, studied law, and in 1879 was admitted to the bar. In 1880 he was married to Miss Madge Morris, of which union there is one daughter, Mrs. L. D. Carpenter, residing in Seattle. Mrs. Austin survives him. In 1890 he came to Washington and first settled in Seattle; in 1892 he removed to Snohomish, then the capital of that county, whence in January, 1897, with the removal of the capital, he removed to Everett. In Grant City, Missouri, he served two terms as prosecuting attorney of his county. In Snohomish he entered into law partnership with Hon. W. P. Bell, formerly attorney general of the state and now one of the judges of the superior court of Snohomish county. This partnership continued until 1908, when Mr. Austin's health began to fail. He stood high in the councils of the Democratic party in Snohomish county, but he never sought office there. He was a shrewd business man, and left a fortune of about $300,000.

O. H. BALLOU.

At Seattle in the evening of December 26, 1911, O. H. Ballou was run down and killed by an automobile driven by one Richard H. Knowles, as Mr. Ballou was returning from a church service. Mr. Ballou was sixty-nine years of age. He had lived for seven years in Seattle, to which he had come from Omaha, Nebraska. He is survived by his wife and a married daughter. He occupied a prominent position at the Nebraska bar, but had not entered very actively into practice in Seattle. He was a native of Saratoga, New York, whence he removed to Omaha in 1877. In 1890 he removed to Plattsmouth, Nebraska, and in 1893 to Columbus, Washington, where he acquired a fruit ranch. Meeting financial reverses, he went to Portland in 1898 and practiced law there until he removed to Seattle in 1901. He was an active worker in churches and charitable organizations.

MOSES V. YODER.

At the Western Washington Hospital for the Insane, at Steilacoom, on the 31st day of December, 1911, Judge Moses V. Yoder ended a rather sorrowful life. He had been in that institution but two weeks. In Kansas he took high rank at the bar. In 1886 he came to Washington and settled in Chehalis, where for years he was a prominent and valued member of the bar. He was seventy-five years old at the time of his death. Two daughters survive him.

HAWLEY S. KING.

January 8, 1912, at Olympia, Hawley S. King, member of the law-firm of King & King, died. He was a native son of Washington, having been born of English parents in Cowlitz county, on April 26, 1856. He had practiced law in Olympia for twenty years with his brother, Charles D. King. He is survived by his widow, a son, and his brother. He possessed the esteem and confidence of the bar and people of Olympia.

JOHN B. QUINN.

At Aberdeen, on January 16, 1912, John B. Quinn died of heart failure. Three years previously he had removed thither from Seattle. He was born in Ohio in 1850. Shortly after the Civil War he removed to Faribault, Minnesota, where he began the study of law and was admitted to the bar. He held various city and county offices there, among them the police judgeship of Northfield at the time of the raid of the Younger Brothers on the Northfield Bank. Judge Quinn bound the prisoners over to trial in the Minnesota district court. About thirteen years ago he and his family removed to Seattle. He was a large, prepossessing man, with pleasing manners, and was a general favorite.

JOSEPH ALBERT BROWN.

On February 14, 1912, at Seattle, Joseph Albert Brown, son of former United States Senator Albert Gallatin Brown, of Mississippi, died after an illness of several weeks' duration. He was born February 12, 1849, at Capitol Hill, Washington, D. C. He received the degree of bachelor of arts at Oxford University, and was admitted to the bar of the State of Mississippi when he was twenty-one years of age. He had won considerable distinction in Mississippi, but he retired from the practice of law at the age of forty-two and removed to Seattle. He is survived by his widow and two children.

SEYMOUR A. CRANDALL.

At Tacoma, on March 19, 1912, Seymour A. Crandall died after a lingering illness. He was born in Elkhorn, Wisconsin, February 11, 1855. He was graduated from the Carleton college at Northfield, Minnesota. He studied law at Ann Arbor, Michigan, and was admitted to the bar there; but he entered the civil service of the United States shortly afterwards as a special examiner in the pension office, which position he resigned in 1888 to come to Tacoma, where he served as Assistant City Attorney, and later as a justice of the peace in Pierce county. He served two terms in the house of representatives of the state legislature from the 38th legislative district. In 1905 he was appointed by Judge James Wickersham as deputy clerk of the district court at Valdez, Alaska. Later he was appointed United States Commissioner at Latouche, Alaska, remaining there until 1909, when he became ill, resigned and returned to Tacoma. He did not resume practice actively after his return from Alaska. He is survived by three children, John W. Crandall, of New York; Seymour A. Crandall, Jr., and Miss Sarah R. Crandall, of Tacoma.

JOHN EDWARD HAWKINS.

At Seattle, on March 21, 1912, John Edward Hawkins, probably the best-known negro lawyer in the Pacific Northwest, died after an illness of eighteen months, caused by Bright's disease. He was born

in Illinois in 1864, and in turn he was jockey, miner, barber and attorney-at-law. Twenty-one years before his death he came to Seattle and went to work at his trade as a barber. He studied law under William H. Morris, and in due time was admitted to the bar. From the outset he was successful. He had gentlemanly manners and a pleasing presence, and his Caucasian clients outnumbered those of his own race. He left an estate worth about $50,000.

JOHN J. BROWNE.

On Moran Prairie, Spokane county, on March 25, 1912, John J. Browne, one of the chief builders of the city of Spokane, died of neuralgia of the heart after over-exerting himself in catching a car at Rockwood station near his home on the Prairie. He was born at Greenville, Ohio, April 28th, 1843. His first schooling was at Columbia City, Indiana; later he attended Wabash College, at Crawfordsville, Indiana, and completed his education at the University of Michigan, from which he was graduated with the degree of LL.B. in 1868. He immediately took up the practice of law at Columbia, Indiana, whence he afterwards removed to Oswego, Kansas, where he practiced for four years. From Oswego he removed, in 1874, to Portland, Oregon, and entered upon the practice of law there. The population of Spokane Falls was only fifty when Mr. Browne and A. M. Cannon alighted from their primitive conveyance in 1878. Captivated by the beauty and wild setting of the Falls, they resolved to go no further. Cannon met Browne at The Dalles, where the latter was trying a law-suit. "Hello, Cannon, what are you doing up here?" was Browne's salutation. The answer was: "I'm on my way to Spokane Falls. Don't you want to go along?" Browne went along. They arrived in Spokane on April 24th, 1878. They approached the late James N. Glover, owner of the townsite, with a proposition to buy an interest in it, on the promise of boosting for the town and helping to make it an important business center. Two days later an agreement was drawn up and signed, by which Glover sold them a half-interest in his claim, excepting such portions as he had given to Mr. Post and built upon himself, and a few other lots which he had virtually given away. They were to pay Glover $3000 for the half-interest; $50.00 down, which was all they had. The final payments were not made for five or six years. Browne and Cannon returned to Portland immediately after signing the agreement. In the Autumn of that year they returned to Spokane Falls and rented rooms and

boarded with Mr. Post. Browne opened a law office. Glover relinquished to him one hundred and sixty acres on what afterwards became Browne's Addition to Spokane Falls. Glover had a team and with it he plowed the ground for Browne's garden and orchard, at a place just south of Pacific avenue and west of Maple street. Browne took an active interest in educational matters, which he completed by service as a Regent and President of the Board of Regents of the University of Washington, at Seattle, after having served six years as a Trustee of the State Normal School at Cheney, and serving also as Regent of the State College. He was instrumental in building the first school house in Spokane, at the place where Davenport's famous restaurant now stands. He was one of the members of the Constitutional Convention which framed the Constitution of Washington. He was one of the first promoters of Spokane's Street Railway system. With the growth of the city his fortune expanded and he was obliged to relinquish the practice of the law in order to care for his large material interests. In 1889 he bought The Spokane Chronicle and was its editor and publisher until 1896; he and Cannon and Glover were the original founders of the paper. He served as president of the Coeur d'Alene Bank & Trust company, president of the Columbia Valley bank, of Wenatchee, president of the Bank of Oroville, president of the Browne Investment company, of Spokane, president of the Columbia Investment company, of Spokane, president of the Spokane Investment company, and of the Browne and Post Investment company, besides being the largest stockholder in the Bank of Cashmere.

Mr. Browne was married on June 16, 1874, to Miss Anna W. Stratton, at Oswego, Kansas, by whom he had five children; Guy C. Browne, Earle P. Browne, Alta (Browne) Hamilton; Irma S[illegible] (Browne) Ross, and Hazel (Browne) Sweeley, the latter residing at Twin Falls, Idaho.

JOHN O. ROBINSON.

At Seattle, on April 9, 1912, John O. Robinson died of a stroke of paralysis. He was born at Thomaston, Maine, on July 7, 1831. He was a graduate of Bowdoin college, of the class of 1854. One of his intimate college friends was the late Chief Justice Melville W. Fuller. Mr. Robinson came to Seattle in 1889 and soon entered into law partnership with the late Fred Rice Rowell. Of late years he had not been active at the Bar.

THEOPHILUS D. POWELL.

At St. Vincent's hospital, in Portland, Oregon, on the 13th day of April, 1912, Theophilus D. Powell, of Tacoma, after an illness of several weeks, passed away. He came from Brooklyn, New York, to Tacoma, in May, 1883. He at once openeda a law office and entered upon the practice; but as Tacoma at that time had only a population of about twelve hundred, and Mr. Powell was not a good mixer, he was obliged to give up the attempted practice and to accept a position as a compositor on the Tacoma Ledger. As soon as he saved some money from his earnings, he opened a law office, and later entered into a partnership with Louis D. Campbell, afterwards Mayor of Tacoma; which partnership continued until Mr. Campbell's death in 1908; the firm name of Campbell and Powell being retained during the remainder of Mr. Powell's life. His specialty was the examination of Abstracts of Title, and he rarely appeared in court. He is survived by his widow, a son and two daughters.

JAMES BRADLEY REAVIS.

April 29, 1912, at Steilacoom, in Pierce county, former Chief Justice James Bradley Reavis died. He was born in Boone county, Missouri, on May 27, 1848, and was therefore almost sixty-four years of age. He was descended from a long line of Scottish ancestors who settled in Virginia in Colonial days. He remained on his father's farm in Missouri until he was eighteen years old. He attended the University of Kentucky at Lexington and read law at Hannibal, Missouri, where he was admitted to the Bar in 1874. He practiced there for a year and then removed to Chico, California, where he remained until 1880, when he came to Washington Territory and settled at Goldendale, in Klickitat county, where he entered into law partnership with Hon. Ralph O. Dunbar, one of the judges of our state supreme court since its organization. They maintained offices for several years in both Yakima and Klickitat counties. In 1884 Mr. Reavis was elected a member of the Territorial council from the counties of Yakima, Klickitat, Lincoln, Douglas, Stevens and Spokane. He was Regent of the University of Washington from 1888 until the admission of the territory into the Union. At the first state election Mr. Reavis was the candidate of the Democratic party for the supreme bench, but failed of election. In 1896 he was the candidate of the People's Party of Washington (comprising the Democratic party, the Silver

Republican party and the People's party) for the supreme bench, and was elected. The last two years of his term he served as chief justice. On retiring from the bench, Judge Reavis commenced the practice of law in Tacoma, from which he later moved to Seattle. He was married in 1891 to Minnie Freeman, of Nashville, Tennessee, who survives him, with two children, Smith Freeman Reavis, and Ann Preston Reavis, all residing in Seattle.

In a business way Judge Reavis committed the mistake of not returning to his old home at North Yakima, where he could immediately have resumed a large practice, for he stood well with all the people of central Washington. At his age he attempted to build up a business in communities where he was virtually a stranger; and the comparative failure of his effort produced a species of melancholy, which affected him during the last three years of his life. He was a lovable character and will long be remembered by those who had the pleasure of his acquaintance.

HOWARD H. LEWIS.

In Phoenix, Arizona, on the 25th of May, 1912, Howard H. Lewis, of Seattle, died after a lingering illness. He was the son of Hon. Joseph R. Lewis, sometime Chief Justice of Washington Territory. He was born in Washington county, Iowa, October 31, 1859, and came with his parents to Washington in 1872, when his father was appointed as Associate Justice of the Supreme court of the territory. For several years they lived in Walla Walla. Howard's education was completed at the University of California; after which he was appointed a clerk of the territorial district court in Seattle. During his incumbency of this office he studied law and was admitted to the Bar in 1881. His father had then retired from the bench, and they entered into partnership together. In 1881 he was married to Miss Betsey Terry, daughter of Charles C. Terry, one of the founders of Seattle. He had a stronger inclination for business ventures than for the practice of law, and so in 1886 he virtually quit the law and embarked in real estate and insurance business with E. A. Turner, under the firm name of Turner & Lewis. With varying business associations, he continued until ill health overtook him and he was obliged to retire from active work. His widow and five children survive him.

JOHN R. KINNEAR.

At Seattle, on May 31, 1912, John R. Kinnear died of paralysis, from a stroke of which he first suffered seven years previously, and of which a recurrence of a severe nature came to him in December, 1910. Mr. Kinnear was for many years a prominent figure in the legal, business and political life of King county, whose choice for governor before the Republican convention at Walla Walla he was in 1889. He had served acceptably in the territorial council. He was a member of the constitutional convention, of whose proceedings he took complete long-hand notes, which he afterwards carefully indexed and preserved; they were turned over to his son, R. M. Kinnear, with an injunction carefully to protect them, as they probably constituted the only complete record of the constitutional convention in existence. It was currently reported and believed at the time that when an effort was made to purchase and print the convention notes, powerful political interests opposed the publication of the history of the debates. Mr. Kinnear afterwards served in the state senate and was chairman of the judiciary committee.

Mr. Kinnear was born in West Point, Indiana, July 26, 1842. Twenty-six years later he was married in Bloomington, Illinois, to Miss Rebecca Means, who survives him with a son (a former state senator) and a daughter, Leota Kinnear.

Mr. Kinnear served in the Civil War as a private in the 86th Illinois Infantry. He marched with Sherman from Atlanta to the Sea. At the close of the war he wrote a sketch, covering one hundred and forty pages, of his regiment and brigade. He was attending Knox college, in Galesburg, Illinois, when the war broke out, and he enlisted. At the close of the war he entered the Chicago Law college, meanwhile studying law in the office of Adlai E. Stevenson, afterwards vice-president of the United States. A sunstroke suffered during the war rendered it dangerous for him to live during the summer season in the Middle West; so in 1883 he removed to Seattle, the climate of Puget Sound being especially attractive and agreeable to him. Since his retirement from the state senate in 1895 Mr. Kinnear practiced law but very little. His health grew more feeble, year by year, and he remained most of the time at his beautiful home in that part of Seattle generally known as Queen Anne hill. He accumulated a large fortune and left an honored name.

WILLIAM T. WARREN.

At Davenport, the county seat of Lincoln county, on Saturday, the 27th instant, former Judge William T. Warren died of pneumonia. A few days previously, after taking a bath, he sat in front of an electric fan. Pneumonia followed.

He was only forty-five and one-half years of age, and he was a notably strong and energetic man, normally good for thirty years to come. He was born in Bellevue, Iowa, December 3, 1866. He came to Washington in 1885. He had traversed the Pacific Northwest, in every territory and state of which he had as a boy worked at whatever came to hand. Reaching Spokane, and after working in real estate offices and doing anything that turned up, he was appointed to a clerkship in the postoffice. His father, Thomas B. Warren, a veteran of the Civil War, was postmaster of Spokane at the time,—namely, in 1890. December 3, 1891, he was married. In 1892 he was admitted to the Bar. In 1893 he located at Wilbur, in Lincoln county, and presently entered into partnership with Hon. H. A. P. Myers, now one of the judges of the superior court of King county. He removed to Davenport in 1904 when he was elected superior judge. He declined re-election, and in 1909 resumed the practice of law with Joseph Sessions, under the firm name of Sessions & Warren. He was one of the men frequently spoken of as a probable candidate for the Republican nomination for congress this year in the Third Congressional district. At the time of his death he was a member of the board of school trustees of Davenport. He leaves a wife and six children—three boys and three girls. The eldest, Miss Elgine, is about sixteen years of age, and he took very great pride in her uncommon brightness and her proficiency in her studies. He was a Mason (having become junior grand warden of the grand lodge), a Knight of Pythias, an Odd Fellow, a Woodman of the World, and an Elk.

While he was on the bench Judge Warren held court several times in King county, and became a favorite with the bar of that county. Although lacking collegiate training, he became a good lawyer and well versed in the history of his country and in public affairs generally. He enjoyed exceptional popularity throughout Northeastern Washington as well as on Puget Sound.

Respectfully submitted,

JOHN ARTHUR, *Chairman.*

Seattle, Wash., July 30, 1912.

PROPOSED ACT FOR A CODE AND A CODE COMMISSION.

SUBMITTED BY RICHARD SAXE JONES OF THE SEATTLE BAR.

A Bill for an Act Providing for a Permanent Code Commission of the State; the Submission of Proposed Acts of the Legislature Thereto; Providing the Method of Preparing a Permanent Code of Laws of the State and Maintaining the Same, and for the Recall of Code Commissioners.

Be It Enacted by the Legislature of the State of Washington:

SECTION 1. There is hereby created a commission to be known as The Code Commission of the State of Washington.

SEC. 2. Said Code Commission shall consist of five members to be appointed from time to time, as herein provided, by the governor and approved by the senate, as follows:

Immediately upon the taking effect of this Act there shall be appointed by the governor five members of said Code Commission, to be selected from among the attorneys-at-law of the state who are admitted to practice before the supreme court of the state and are members of the Washington State Bar association; two of whom at the outset shall be appointed for a period of two years; two for a period of three years; and the remaining member for a period of four years; who shall each take an oath of office as such Commissioner similar, so far as the same shall be applicable, to the oath of office taken by the judges of the supreme court; each of whom shall hold office until his successor has been appointed and confirmed, and has qualified. When so confirmed, the provisions of section 10 hereof shall be applicable to them.

SEC. 3. Previously to the session of the legislature next before the expiration of the term of any Code Commissioner or Code Commissioners, the governor shall appoint a successor in office of any Code Commissioner or Code Commissioners whose term or terms shall have expired subsequently to the next session of the legislature, and prior to the succeeding session; such appointment shall be presented to the senate for confirmation, and if confirmed by a majority vote of the senate, such Commissioner or Commissioners shall succeed to the office of Code Commissioner or Commissioners whose official term or terms may expire next after the session of the legislature. If any appointment so made by the governor shall be rejected or not confirmed by the senate, the governor shall appoint from time to time other persons qualified as above set forth as Code Commissioners, to serve until such appointment or appointments are confirmed by the

senate; and any appointment so made by the governor when the senate is not in session shall be sufficient to authorize such Code Commissioner to fill the office of any Code Commissioner whose term has expired, to which office he has been appointed, until his name has been approved or rejected for such office by the senate.

SEC. 4. If any vacancy shall exist in the office of Code Commissioner, the governor shall immediately appoint a person, qualified as above set forth, to fill such office for the term for which such vacancy exists, and, upon taking the oath of office herein prescribed, such appointee shall immediately become a member of said Code Commission. Such appointment shall be reported by the governor to the next session of the senate within one week after it shall have convened, and the senate shall proceed to confirm or reject such appointment. If rejected, the governor shall appoint from time to time another person qualified as above set forth as Code Commissioner until such appointment has been accepted and confirmed by the senate. Any appointment so made by the governor shall be sufficient to authorize such Code Commissioner to fill the office until his name has been accepted or rejected for such office by the senate.

DUTIES.

SEC. 5. It shall be the duty of the Code Commission;

First. To proceed at once to codify all of the laws of the state in force and effect at the time of the first meeting of said Commission; to prepare the same in printed form in such manner as to eliminate all duplications; to arrange all of the laws in proper order with reference to the subject to which they relate, and to divide the same into such subjects, chapters and sections as may be necessary to submit a complete code of the laws of the State as they then exist.

Second. It shall be the duty of said Code Commission to prepare such Code in printed form in such numbers that each officer and member of the legislature next succeeding the printing of the same may have three copies thereof, and that every judge of the supreme court and of the superior courts and every member of the Washington State Bar association may receive a separate copy thereof; and such copies shall be furnished to said legislators, judges and members of said bar association as promptly as practicable after the compilation has been completed.

Third. The code so compiled by the Code Commission, and so presented to the next session of the legislature after its compilation, shall be immediately placed on the calendar of each house of the legislature for adoption, and may be adopted as a whole or with such amendments as shall be provided by the legislature; and when so adopted it shall be and remain the permanent basic code of the laws

of the state and shall have the full force and effect of law, in like manner as though each section or other part thereof had been adopted separately by the legislature and approved by the governor.

FUTURE LEGISLATION.

SEC. 6. After a permanent basic Code has been adopted by the legislature and approved by the governor as hereinbefore set forth, the Code Commission shall remain in permanent session at the seat of government for the purpose of examining into all future legislation proposed to be adopted by the legislature.

SEC. 7. No act of any kind, except for the appropriation of money, or because of an emergency shown in the act by reason of which it cannot be submitted to the Code Commission, shall be enacted by the legislature until it has been first submitted to the Code Commission at least ten days before its third reading in both houses of the legislature; and shall be certified and reported upon by the Code Commission. The record of such submission shall appear upon all enrolled enactments.

SEC. 8. Five copies of every proposed bill or enactment by the legislature shall be submitted to the Code Commission, in typewritten or printed form, at least ten days before the same is read for the third time in both houses of the legislature, and said Code Commission shall immediately proceed to examine the same in connection with the permanent basic code of the state and within five days after receipt thereof shall report to the legislature (if then in session, or to the secretary of state if the legislature is not in session) the place which said bill should occupy in the code of laws of the state by chapter, section or number, as the case may be; and with such report shall file its approval of or objection to said bill, giving the reasons therefor, and suggesting in writing any alteration or amendment that should be made to cause said act to conform to the permanent basic code of the state.

SEC. 9. In its report upon any bill proposed to be enacted by the legislature the Code Commission shall state in writing its views as to the constitutionality of said proposed act and its effect, if any, upon vested property rights under former legislation and the decisions of the supreme court. It shall, in all matters, advise the legislature as to the probable effect of said proposed enactment if it shall become a law.

SALARY AND TERMS OF OFFICE.

SEC. 10. Each Code Commissioner appointed by the governor and approved by the senate shall hold office permanently unless impeached or recalled, as hereinafter provided, but shall be retired from office as of course upon his seventieth birthday, and shall thereafter receive

a compensation of Twenty-five Hundred Dollars ($2500.00) per year during his life.

SEC. 11. Each Code Commissioner during his active term of office shall receive a salary of Seventy-five Hundred Dollars ($7500.00) per annum, payable monthly out of the general funds of the state by warrant drawn by the state auditor and payable by the state treasurer.

SEC. 12. The Code Commission is authorized to employ assistants, clerks and stenographers as to it shall seem necessary, whose compensation for services shall not exceed One Hundred and Fifty Dollars ($150.00) per month for assistants; One Hundred and Twenty-five Dollars ($125.00) per month for clerks; and One Hundred Dollars ($100.00) per month for stenographers, unless authorized to do otherwise by an act of the legislature.

IMPEACHMENT AND RECALL.

SEC. 13. Any member of the Code Commission shall be subject to impeachement, and the proceedings therefor shall be the same as provided for the impeachment of a member of the supreme court; and each, every and all portions of the laws of the state as at this time existing in reference to the impeachment of a judge of the supreme court, are made applicable to and the proper method for the impeachment of a Code Commissioner.

SEC. 14. Any Code Commissioner may be recalled and his term of office ended by either of the two following methods:

First: By the filing with the secretary of state of a written order of recall signed by the governor and two judges of the supreme court; upon the filing of which order of recall with said secretary the same shall be presented to the senate at the next regular session thereof, and a vote shall be taken in the senate as to whether such recall shall be allowed; and if a majority of the senators shall vote in favor of such recall, the governor shall immediately certify to the secretary of state that such code commissioner has been recalled, and that his term of office has expired thereby, and a new appointment shall be made in his place as hereinbefore provided.

Second: By the filing with the secretary of state of a petition signed by not less than ten per cent. of the qualified voters of the state voting at the state election next preceding the filing of said petition; upon the filing of which petition the secretary of state shall report the same to the senate next in session thereafter, and a vote shall be taken by the senators upon such petition for recall, and if a majority of the Senators shall vote in favor of said recall, then upon the certifying of such vote to the governor such Code Commissioner shall be recalled thereby, and his term of office shall expire immediately, and the vacancy shall be filled as hereinbefore provided.

PROCEEDINGS

OF THE

Prosecuting Attorneys State Convention

HELD AT

TACOMA, WASHINGTON

JULY 30-31, 1912

President, J. R. BUXTON, Centralia.
Vice President, JOHN F. MURPHY, Seattle.
Secretary, FRANK W. BIXBY, Bellingham

Minutes of the Prosecuting Attorneys' State Convention Held at Tacoma, July 30, 1912.

REPORTED BY FRANK W. BIXBY, SECRETARY.

Meeting called to order by President Everett J. Smith of Walla Walla county.

In the absence of Secretary John Truax of Adams county the president called for nominations for temporary secretary. Frank W. Bixby of Whatcom county was nominated and elected.

J. L. McMurray of Pierce county delivered an address of welcome, which was responded to by Attorney General W. Vaughn Tanner.

J. R. Buxton* of Lewis county then read a paper on "Changes in the Criminal Law of the State." John Murphy of King county spoke in favor of the paper as read. William B. Ritchie of Clallam county spoke against a verdict by less than twelve. Others joined in the discussion, taking different sides. Mr. McMurray of Pierce county argued that a verdict of ten was sufficient. Attorney General Tanner spoke in favor of the verdict by ten jurors in a criminal case. In fact the sentiment of the convention seemed to be that a majority verdict of ten of the twelve jurors should be sufficient in criminal cases as well as in civil cases.

Frank W. Bixby† of Whatcom county then read a paper analyzing the Local Option Law.

R. M. Sturdevant of Columbia county discussed the same, at the close of which discussion the meeting adjourned until ten o'clock a. m., July 31st.

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* For Prosecuting Attorney Buxton's paper, see page 202.

† For address by Prosecuting Attorney Bixby, see page 208.

July 31, 10 a. m.

President Smith being absent, Vice President Buxton took the chair.

John Murphy of King county made an address on "Needed Legislation." Messrs. Ritchie, Sturdevant, Tempes, O'Brien, Bixby, Attorney General Tanner, and others, spoke in favor of the remarks, especiall indorsing the recommendations for a staute giving the prosecuting attorney power to examine witnesses under oath prior to arrest or trial.

(Mr. Murphy's address was *extempore* and as no report was made of it the same is not printed herewith).

At this time President Smith appeared and took the chair.

The next order of business was the election of officers for the ensuing year.

The president called for nominations for president of the association.

Mr. Tempes nominated J. R. Buxton. The nomination was seconded by Mr. Ritchie. On motion the rules were suspended and the secretary was instructed to cast the ballot of the association for J. R. Buxton for president. The secretary announced that the ballot had been so cast. Whereupon President Smith announced that J. R. Buxton was the unanimous choice of the association for president for the ensuing year.

On motion Mr. Sturdevant nominated Frank W. Bixby for secretary of the association. This was seconded by Mr. Ritchie. On motion the president cast the ballot of the association for Mr. Bixby for secretary.

Mr. Bixby placed in nomination Mr. Murphy for vice president. On motion the secretary was instructed to cast the ballot of the association for Mr. Murphy as vice president. The secretary announced that the ballot had been so cast, and the chair announced that Mr. Murphy was the unanimous choice of the association for vice president for the ensuing year.

Mr. Buxton then took the chair. On motion of Mr. Smith the

chair was authorized to appoint a committee of three to propose new legislation. Mr. Tempes, of Clarke ounty, introduced a resolution recommending the passage of a law at the next session of the legislature making it unlawful for people of the Caucasian race to intermarry with negroes, Japanese, Chinese, Hindoos, or other persons of the Mongolian race, and providing for a penalty for the violation of the law; and that the legislative committee of this association be directed to use all honorable means to secure the passage of such a law. Mr. Tempes also offered a further resolution as follows: That this association recommend the passage of a law at the next session of the legislature to prohibit the taking, catching, or fishing for any kind of trout whatever in any of the waters of the State of Washington by persons not bona fide residents of the State of Washington, without said person first having secured a license therefor, providing for such a license, and providing a penalty therefor, and that the legislative committee of this association use all honorable means to secure the passage of such a law.

Upon motion the association adjourned to meet on call of the president at the time and place of the annual meeting of the State Bar Association, 1913.

CHANGES IN THE CRIMINAL LAW OF THE STATE.

By J. R. Buxton, Prosecuting Attorney, Lewis County.

In the brief time allotted to me upon this question I desire to present to you four changes in the criminal law of this state which seem to me desirable:

1. That only ten (10) jurors in criminal, as well as in civil, cases should be required to make a verdict.
2. The state should not be required to show title in any particular person or corporation in the property stolen in a burglary case.
3. The prosecuting attorney, as such officer, should have the right to subpoena witnesses to appear before him, that he might examine into the facts in every criminal case.
4. The state should have the right to the same number of peremptory challenges as are given to the defendant.

Briefly discussing the first suggestion that upon the agreement of ten jurors a verdict should be returned in criminal as in civil cases, I desire without elaboration to suggest the following reasons:

I think that our long upheld contention that twelve jurors should unanimously agree puon the return of a verdict in civil as well as in criminal cases was based largely upon sentiment. Our respect for ancestral customs and traditions has always been great, and customs that have come down to us from antiquity are naturally revered and supposed to be based upon sound reasons, and to have had their foundation in the sincere and well-considered action of the best thinkers of the olden times. Largely this is true, but the best thinkers of other days were surrounded by conditions entirely different from those with which we are now met, and safeguards were much more necessary for the protection of individual life and liberty in that day than in this.

The unanimity of opinion of twelve of the defendant's peers as to his guilt was at that time really necessary, because of the power of the state over citizens, and the possibility of tyranny in the enforcement of the law, which now no longer exists.

To lawyers who are familiar with the origin of trial by jury in England it is unnecessary to describe conditions as they then existed, and a mere cursory reading of Sir William Blackstone's chapters upon that question will convince the lay, as well as the legal, mind of the entire wisdom in the organization of liberty under the law, which then prescribed the right of every one charged with crime to appeal to the throne, not of the reigning monarch, but to that of the twelve

chosen jurors who should agree unanimously upon his guilt beyond all reasonable doubt before his life or liberty should be taken.

The jury so instituted and constituted was the only bulwark erected against the menace of tyranny, which was constantly on exhibition before the eyes of the common people. The emergency justified the requirement that there should be unanimity in the verdict.

But there has not been a time since the organization of the great American republic when there was any danger to the life or liberty of the law-abiding citizen in the courts of the country.

It is true that in our administration of justice courts instruct our juries, and the law justifies the instruction, that the defendant is presumed to be innocent until the contrary is proved beyond a reasonable doubt. But that presumption is a technical one, incapable of practical use, and in actual fact ignored.

It is almost impossible in such a civilized country as ours for the average man to sincerely hold an indicted man to be guiltless; not that he will actually hold him to be guilty and to demand his punishment, but the very fact of indictment by a grand jury or the charge in an information by a prosecuting attorney clouds the defendant with doubt and suspicion.

It is not argued that this is as it should be, but only that it is a condition born of the widespread knowledge that tyranny has ceased to exist; that public authorities do not desire the conviction of any innocent man, and that prosecuting attorneys and grand juries desire to investigate, and do investigate, conditions before either is willing to charge a citizen with crime.

There is, therefore, little danger that any innocent man will be injured by such doubt or suspicion, nor is there now any danger that ten out of twelve intelligent, right-thinking men will be convinced by evidence beyond all reasonable doubt that a defendant is guilty in a case where he is, in fact, an innocent man. It will not do to say that the fact that two other men who hear the testimony and conclude that he is not guilty, determine the fact that all reasonable doubt has been excluded, because that is a conclusion that all wisdom resides in the number twelve, and that the united opinion of the twelve speaks absolute verity, when if fourteen or fifteen had been the number called, the other three might have dissipated the wisdom of the twelve.

Surely the thing to be determined is what is probably, and to a high degree of certainty, the fact as to the guilt or innocence of the defendant. Had the jury originally been composed of six persons instead of twelve the concensus of opinion of the six would have been of equal dignity with that of the twelve, and disagreements would have been far less numerous and the execution of the criminal law would have been more certain and satisfactory.

Again, to a large extent the disagreement of juries in criminal cases where only one or two jurors hold out for acquittal, and thus prevent a verdict, unfortunately seems to be in those cases where there has been great public excitement and clamor, or wherein a personage of wealth or of importance has been able to find one or two jurors strong enough or perverse enough to hold out against the combined opinion of the other jurors.

On the other hand, few prosecuting attorneys have met with a disagreement of jurors where the defendant was poor, uninfluential and friendless. In such cases if as many as ten or eleven of the jurors pronounce in favor of his conviction the dissenting jurors are prone to yield easily and to console their minds with the argument that if the evidence is strong enough to convince ten out of twelve unprejudiced men beyond a reasonable doubt of the defendant's guilt. that he is most probably guilty, and that no wrong will be done by gracefully yielding their not over-strong doubt of his guilt.

When the states in this Union first began considering and breaking away from the unit rule in civil cases much discussion and many strong arguments were made against the change, but in this day none are heard to oppose the new rule, and in practice it is most satisfactory to judges, to attorneys, and we believe on the whole, to litigants; and it is confidently urged that a change in criminal cases would meet with the same satisfactory acquiescence by the lovers of law and order in our state.

Referring to my second proposition that the state should not be required to show title in property stolen in a burglary case, it seems to me that the mere statement of the proposition should carry conviction. The gist of the crime of burglary is the breaking into and entry of the dwelling of another with the intent to commit the crime of larceny.

Crimes are not against the individual, but against the state; they are punished not simply because the action of the defendant is wrong, but because the law has forbidden it. Of course the reason why the law has forbidden it is because it is wrong to deprive any other person of his property, and because it is wrong to break and enter the dwelling of another without his consent.

It is a rule of order as well as of right, and fulminated by the state in its desire and determination to protect its citizens, and to maintain order and safety. The wrong is just as great to deprive one citizen of his property as to take that of another citizen, and the burglar who breaks and enters the dwelling has no care whether the valuable that lie before him are the property of one or another. With him it is a proceeding *in rem*. He has no real malice against the person who chances to be the real owner of the property any

more than he has against the one who has no interest therein, but only chances to be occupying the dwelling.

The only logical proof would seem to be to show that the property taken by the burglar was not *his* property, but that of another. Many acquittals have occurred in burglary cases by reason of this unreasonable rule. Take the case of two persons claiming to be the owner of certain personal property: An action may be pending in the civil courts to determine the ownership thereof; while a controversy is pending the property may be taken by the burglar and the prosecuting attorney is met with the proposition that he must elect to treat the one or the other as the real owner, and try out that question in the criminal case.

It is naturally sopposable that the two claimants to the property would not be in court contesting each the ownership of the other were it not that the ownership was doubtful, and if doubtful the criminal would escape. The prosecuting attorney could not charge it as the property of both claimants, nor as the property of the one *or* the other, but he must charge it as the property of the *one* and prove that charge beyond all reasonable doubt, or the criminal goes free, when no doubt whatever exists as to the facts that he broke into the dwelling; took the property of the one or the other, dependent upon which was the real owner, and violated both the rule of right and the rule of order, and escaped only because of the illogical and unreasonable rule of law.

I feel strongly the necessity of the third change of the law suggested, giving the prosecuting attorney the right to subpoena witnesses in criminal cases to appear before him and testify under oath as to the facts known to them, in order that the prosecuting attorney may have opportunity to either file or refuse to file an information charging the defendant with crime. It would not be doubted that prosecuting attorneys, as a rule, are lawyers of a higher class or of as much intelligence and competency as are justices of the peace, and yet our statute authorizes such examination before justices of the peace, and they are constantly being appealed to for such examination; but every prosecuting attorney and every court knows how unsatisfactory such examinations are.

It is not to be believed that prosecuting attorneys of the state are so prejudiced against persons rumored or reported to have committed crimes, that they would either corruptly or ignorantly subpoena witnesses to appear before them and give testimony with any desire to unjustly charge or prosecute such supposed offenders when the evidence failed to justify it, and every lawyer can understand how much more thoroughly and easily the prosecuting attorney could make such examination than he can under the present practice.

There is another view, and an unpleasant one, to advance before a

meeting of lawyers or of judges; yet at the same time one that would guard against many abuses.

Lawyers who defend criminals are of every grade; some of the highest and noblest intellects within the profession; others who make a practice of haunting jail corridors, police courts and police headquarters, for the purpose of securing, if possible, such money or valuables as the professional criminals may be able to turn over, and for the purpose of aiding them to escape justice by any means that may not jeopardize such attorney's personal liberty.

One of the most common practices of the latter class is to spirit away evidence for the state, and where an arrest is made and an examination has to be had before a justice of the peace upon a preliminary examination the prosecuting attorney is met with the impossibility of finding the principal witnesses, while, if he had the opportunity, as soon as the commission of the crime is discovered, to make the investigation suggested under this heading, the action of the disreputable shyster could not be effective.

It is suggested under my fourth specification that the state should have the right to as many peremptory challenges in criminal cases as are given to the defendant. No logic appears to be at the basis of our present rule giving a double advantage in challenges to the defendant, and this rule, like the unanimity rule in verdicts, was born of the old fear of tyranny, and of the undue influence of the state against the defendant. It is an old maxim of the law that "when the reason of a rule fails, the rule fails also," and the reason for this rule has long ceased to exist.

The only logical ground for a challenge at all is that the individual challenged is for some reason, not because of prejudice or previous expression of opinion, an unfair or improper person to pass upon the merits of the case. There certainly is no reason now why that condition should be one more adverse to the defendant than to the state. As a matter of fact, more jurors are unfitted by reason of sentimentality, by the desire to be merciful, to forgive and forget; thereby unfitting them to do justice to the state, than there are persons who are harsh, proscriptive and unfitted to deal justly with the defendant.

After the challenges for cause have, theoretically at least, eliminated every juror who is prejudiced, either against the state or the defendant, it is illogical to suppose that either the state or the defendant is still placed in a position of vantage over the other, and we earnestly believe that this illogical statute should be modified to the extent of giving to the state and to the defendant the same right of challenge.

Not in connection with the criminal law and its enforcement, but sometimes connected therewith, and usually coming under the con-

sideration of the prosecuting attorney, is another amendment to our statute which I should like to suggest, and that is that in no case should the state or county be required to give a bond for costs, either in an injunction or any other case, for the reason that the credit of these public municipalities is amply sufficient to protect any defendant against any loss by reason of bringing suit.

Our municipal corporations have been given to a large extent such a rights as I suggest, and it is unnecessary for such corporations to give a bond upon appeal. The object of such bond is only to secure to the defendant a return of any loss he may sustain by reason of any unjust action brought against him.

There is no sacredness in a bond; it adds nothing to the advantage of either party, except to make more sure to the opposite party that he shall be made whole under the condition that loss accrues to him by reason of the unsuccessful litigation of the opposite party. While theoretically the state or counties might become insolvent, practically such a thing is impossible, and the execution of a bond is only a formality, and in other respects the law looks to actualities and not to formalities. I admit that this is not a matter of so serious importance as the other matters discussed, for the reason that under our present system of bond execution a bond may be purchased by application to a bonding company at a very reasonable compensation; but as this is wholly a useless outlay and come at last from the body of the county, it is unnecessary and imposes unnecessary labor in all cases where the county is a party.

I have not enlarged upon the reasons for these suggestions, but have presented them to you for your consideration, hoping that others more capable may agree with me in my contentions and press earnestly for the establishment of these rules.

LOCAL OPTION.

By Frank W. Bixby, Prosecuting Attorney of Whatcom County.

The construction of the so-called "Local Option Law," the same being chapter 81 of the Session Laws of 1909 of the State of Washington, has furnished many a hard fought battle in Whatcom county, and in all probability in many of the counties of the state, since there is scarcely a county in the state that has not one or more dry units. I have accepted the invitation of the program committee, to prepare and deliver a paper on the local option law, hoping that a resume of my experience may be of some little aid to my fellow prosecutors in the elucidation of this statute.

In the case of *State vs. Jones*, reported in 66 Wash., page 230, is recorded my first hard fought round in the construction of this statute. A Mr. Jones had given a drink of whiskey from a bottle to a friend whom he chanced to meet on the streets of Ferndale, the same being a town of the fourth class and a dry unit under the so-called local option law. Defendant's attorney demurred to the information and produced an exhaustive brief in support of his demurrer. He argued, first, that the act was unconstitutional as to giving away liquor for the reason that giving away was not sufficiently embraced in the title; and, secondly, that it was the intention of the legislature to penalize the giving away of liquor in a dry unit only when the same was done as a cloak or subterfuge for a sale, and not when the same was done in a spirit of hospitality and friendship with no thought of pecuniary gain.

After argument the superior court, Judge Kellogg sitting, sustained the defendant's demurrer upon the first ground; and later when the stipulation was presented, preparatory to an appeal by the state, the court remarked that in his opinion the demurrer was good as to both grounds.

The state appealed from the lower court, and the supreme court reversed the decision, and held that the title was sufficient, and that giving away meant just what it said without any quibbling.

The next fight that came up in Whatcom county was on the construction of the statute as to whether or not wholesalers could sell intoxicating liquor in a dry unit, sections 10, 18 and 20 indicating that wholesalers might operate and sell in a dry unit, while nearly every other section either impliedly or positively forbidding the sale. The lower court, Judge Joiner of Skagit county sitting, held that wholesalers were permitted under the statute to operate in a dry unit, and sell and deliver therein. As this was a trial, and evidence was taken, the state could not appeal, and acquiesced in this ruling while waiting

for an opinion in the *Jones* case, hoping for some light from that source, and when the decision did come it was sufficiently encouraging to cause the arrest of one of the eight or ten wholesalers for selling intoxicating liquor in the dry unit of Bellingham. The wholesalers bunched behind one of the most able attorneys in the Northwest, who demurred to the information upon all the statutory grounds, and presented a very forcible and learned argument to the lower court, Judge Hardin sitting.

The burden of the defendant's argument was that the statute did not apply to wholesalers or manufacturers, but to retailers only. The state took the position that was later adopted by the lower court in deciding the case and has since been taken by our supreme court in the case of *State vs. Robinson*, a Skagit county case, reported in 67 Wash., page 425, to-wit: That while section 10 makes it mandatory that retailers must remove their stock within ten days after the adoption of the local option law, and section 20 says that the holding of a government license in a dry unit should not be taken as any evidence of the guilt of wholesalers, and that section 18 says that wholesalers might deliver to residences in a dry unit in their own conveyances; still, in the light of sections 9 and 11, which positively forbids the sale of intoxicating liquor in any quantity in a dry unit, and the provision of section 6, which requires all persons holding liquor licenses to present the same and receive back their *pro rata* on the unexpired portion of the same, and the stringent provision of sections 16 and 17 as to druggists and doctors, in addition to the whole spirit and intent of the law as made manifest from a general reading of the same, that the legislature never intended that the wholesalers should sell in a dry unit, although to give effect to sections 10, 18 and 20 it conceded that wholesalers might continue to keep their warehouses in dry units and continue to deliver therefrom so long as they had a stock to deliver from. The statute forbids the shipment of liquor into a dry unit to places other than residences, but the wholesalers readily avoided this by shipping from another state, and thus getting behind the United States government interstate commerce law.

To anyone who has not given the statute study this construction probably will sound inconsistent, but a close analysis of the statute by any unprejudiced mind will surely prove that this is the right interpretation. Were the construction contended for by the defendant to prevail, we would have wholesalers selling and soliciting in a dry unit without a license, and without any restrictions as to a record of sales, while the competing wholesalers on the outside in wet territory must first secure a license from the proper authorities, and cannot operate until the authorities see fit to grant the same, and

general liquor law, but is an independent enactment for the abolition of a nuisance and in no way conflicts with or interferes with the local option law of 1909.

Many close questions have arisen on the construction of various clauses of the different sections. For instance, section 9 permits giving away at the residence of a person, or in his private apartments; and section 18 permits a delivery by a wholesaler or manufacturer at a person's residence. Question: If a person rents a room at a lodging house for a night, can he order a case of beer from the brewery, or a gallon of whiskey from a wholesaler, and invite in his friends for the evening and give the same away? The litigious question being, when is a residence a residence under the meaning of the statute, and when is one's private apartments his private apartments under the meaning of the statute?

Section 17 permits the sale by a druggist of liquor upon prescription for medicinal purposes, or sacramental purposes, or of alcohol for mechanical, chemical or medicinal purposes. Under the wording of the above quoted statute there can be no question but what a person must have a prescription to secure whiskey, brandy or other spirituous intoxicating liquor for medicinal purposes, except as to alcohol, but it is a serious question as to whether or not a druggist would be liable for the sale of alcohol for medicinal, mechanical or chemical purposes without a prescription, or other authority except the word of the purchaser, and if a prescription is necessary for mechanical and chemical purposes, who is going to issue the same? Surely not an M. D. Again, under the wording of the statute, what authority must a druggist have in order to have a good defense for the sale of intoxicating liquor if he sells wines for alleged sacramental purposes? Again, section 18 provides, "That nothing herein shall apply to any person who may bring into a dry unit upon his person, or as his personal baggage, and for his private use, intoxicating liquor in excess of one gallon of spirituous liquor, or one case of malt liquor." Question: Does "private use" mean that the individual must drink all this liquor himself, or can he bring the liquor into a dry unit, secure a room or shack, and then at his private apartments proceed to give away to his friends? Further, does the language "not to exceed one gallon of spirituous liquor or one case of malt liquor" mean that the individual may bring into the dry unit at one time not to exceed the gallon of spirituous liquor and also not to exceed one case of malt liquor? Or does it mean that he is not to bring in to exceed one gallon of each or either? The same section also provides that shipments of liquor in continuous transit to a point outside the dry unit are exempt.

Here is a practical case now pending in a justice court in Whatcom

county. A farmer drove to a dry unit, left his team in a livery barn, took the train and went to a wet unit where he purchased and carried back quantities of liquor in excess of the prohibited amount. On the way from the train to the livery stable in the dry unit and with the liquor in his possession he was arrested. He declared that it was his intention to take the liquor to his farm for a barn raising. Were the goods sufficiently in continuous transit for a successful defense?

There are other similar questions that could be raised on the statute, but the writer believes that enough have been raised to occupy all the time that this convention has allotted for a discussion of the same. Some of these questions may have been decided in some of the superior courts. If so, the convention may well afford the time spent in learning of the same, for the local option law is and will continue to be the source of much strenuous litigation, and the above and other similar questions that might be deduced while the statute remains as it is, will, until settled by our supreme court, continue to perplex the prosecutors of the State of Washington.

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"	Frank H. Graves	"Non-Partisan Selection of the Judiciary."
"	Thomas Carroll	"Policy of Redemption Laws."
"	John W. Pratt	"Government of Cities."
"	Charles S. Fogg	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis	"Our Exemption Laws."
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"	Orange Jacobs	"Reminiscences of the Bench and Bar of Washington."
1895	George M. Forster	President's Address.
"	George Turner	"Practice and Procedure in the State of Washington."
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"	John J. McGilvra	"The Pioneer Judges and Lawyers of Washington."
1896	Charles S. Fogg	President's Address—"The Law and Lawyer in History."
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"	James Wickersham....	"The Constitution of China—A Study in Primitive Law."
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"	Frederick Bausman....	"Public Policy as an Element of Judicial Construction."
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"	George H. Walker.....	"What Shall Be Done About the Trusts?"
"	E. F. Blaine.....	"Decennial of Our State Constitution."
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